MONTANA LEGISLATIVE HISTORY

Chapter 447 19 95

Bill H _____ S 316 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 14	✓ C	Hearing Date(s)	Feb 15	✓ C
	Mar 22	✓ C			C
		C			C
		C			C
Date Out	Mar 23	✓ C		Feb 15	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCUR AS AMENDED MOTION FAILED	30	69

SB 314 INTRODUCED BY HARGROVE, ET AL.

PROVIDE FOR PREPARATION OF PLANS FOR A PERMANENT LAW ENFORCEMENT ACADEMY IN BOZEMAN

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO JUDICIARY		
2/09	HEARING		
2/09	TABLED IN COMMITTEE		
2/16	TAKEN FROM THE TABLE		
2/16	REREFERRED TO JOINT SUBCOMMITTEE ON LONG-RANGE PLANNING		
2/16	TABLED IN COMMITTEE		
3/24	MISSED TRANSMITTAL DEADLINE FOR 67TH DAY DIED IN COMMITTEE		

SB 315 INTRODUCED BY MOHL, ET AL.

EXEMPT TRANSPORTATION OF REGISTERED GUESTS OF A RESORT, HOTEL, MOTEL, OR OTHER LODGING FACILITY FROM MOTOR CARRIER REGULATION

2/06	INTRODUCED		
2/06	FIRST READING		
2/06	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/16	HEARING		
2/17	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 316 INTRODUCED BY BISHOP

PROVIDE FOR USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE

BY REQUEST OF DEPARTMENT OF JUSTICE AND GOVERNOR

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO JUDICIARY		
2/08	FISCAL NOTE REQUESTED		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE PRINTED		
2/15	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED	35	15
2/17	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/14	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED AS AMENDED	74	24
3/28	3RD READING CONCURRED	84	10
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	46	0
4/03	3RD READING AMENDMENTS CONCURRED	45	0
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		

4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 447		
	EFFECTIVE DATE: 10/01/95		

SB 317 INTRODUCED BY BENEDICT

CLARIFY THE EXCLUSION OF LAWYERS AND ACCOUNTANTS FROM THE DEFINITION OF INVESTMENT ADVISER

BY REQUEST OF THE COMMITTEE ON BUSINESS AND INDUSTRY

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO BUSINESS & INDUSTRY		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED		
2/15	2ND READING PASSED	49	0
2/16	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/09	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	93	2
3/14	3RD READING CONCURRED	93	6
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 239		
	EFFECTIVE DATE: 10/01/95		

SB 318 INTRODUCED BY BENEDICT

CREATE A STATUTE OF LIMITATIONS FOR NEGLIGENCE OR BREACH OF CONTRACT ACTIONS BROUGHT AGAINST ACCOUNTANTS

BY REQUEST OF SENATE BUSINESS & INDUSTRY COMMITTEE

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO JUDICIARY		
2/13	HEARING		
2/14	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
	DIED IN COMMITTEE		

SB 319 INTRODUCED BY HERTEL

ALLOW DEPARTMENT OF LIVESTOCK TO CONDUCT CERTAIN ACTIVITIES, INCLUDING COLLECTION OF AN ASSESSMENT ON CATTLE, AS PART OF BEEF PROMOTION AND MARKETING ACTIVITIES

2/07	INTRODUCED		
2/07	FIRST READING		
2/07	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/08	FISCAL NOTE REQUESTED		
2/10	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	49	0
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/13	3RD READING PASSED	49	1

SENATE BILL NO. 316

INTRODUCED BY Bishop

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE, RENDER INOPERABLE, OR FORFEIT THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2].

(2) The results of a screening test may be used for determining whether probable cause exists to

believe a person has violated 61-8-401, 61-8-406, or [section 2].

(3) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(4) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year of that person's driver's license.

(5) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

(6) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2] and whether the person refused to submit to the test.

(7) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department shall consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(8) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(6).

NEW SECTION. **Section 2. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public.

(2) A person convicted of a violation of this section must be sentenced under the provisions of 45-5-624.

(3) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

NEW SECTION. **Section 3. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to actions under

61-5-212(3) or (6) or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than $20,000, or both.

Section 4. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the

approval of the court.

(3) A prosecution for a violation of 61-8-401, 61-8-406, or [section 2] may not be deferred."

Section 5. Section 61-5-212, MCA, is amended to read:

"**61-5-212. Driving while license suspended or revoked -- penalty -- seizure, rendering inoperable, and forfeiture of vehicle.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406, [section 1], or [section 2] must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) Upon a second or subsequent conviction of a violation under the terms of subsection (3), the sentencing court shall order the motor vehicle owned and operated by the convicted person at the time of the offense to be seized and subjected to the forfeiture procedure provided in 61-8-421.

(7) A court may not suspend or defer imposition of penalties provided by this section."

Section 6. Section 61-8-402, MCA, is amended to read:

"**61-8-402. Blood, breath, or urine tests.** (1) ~~Any~~ A person who operates or is in actual physical

control of a vehicle upon ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests are administered. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

(2) ~~Any~~ A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this section~~.

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall forward the license to the department, along with a sworn report that the peace officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test or tests upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a test or tests:

(a) upon a first refusal, a suspension of ~~90 days~~ 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test or tests.

(7) All suspensions are subject to review as provided in this part."

Section 7. Section 61-8-421, MCA, is amended to read:

"**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-5-212, 61-8-714 or 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a second or subsequent offense under 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

Section 8. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in

subsections ~~(7)~~ (8) and ~~(8)~~ (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection ~~(7)~~ (8), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection ~~(7)~~ (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection ~~(7)~~ (8), on the third ~~or subsequent~~ conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection ~~(7)~~ (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third ~~or subsequent~~ offense that occurred within 5 years of the first offense may not be ~~deferred or~~ suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be

punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(4)~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

~~(5)~~(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been ~~no~~ an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are

confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

~~(6)~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

~~(7)~~(8) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(8)~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(10) A court may not defer imposition of sentence under this section."

Section 9. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection ~~(7)~~ (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection ~~(7)~~ (9), on a second conviction of a violation of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection ~~(7)~~ (9), on a third ~~or subsequent~~ conviction of a violation of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common

carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(4)~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

~~(5)~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

~~(6)~~(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been

~~no~~ an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then ~~the prior offense must be expunged from the defendant's record~~ all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(8) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

~~(7)~~(9) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(8)~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(11) A court may not defer imposition of sentence under this section."

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [sections 1 through 3].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0316, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill providing for the use of a preliminary alcohol screening test for a person suspected of driving under the influence; establishing an alcohol concentration limit of 0.02 for a driver under the age of 21; increasing to six months the suspension and revocation time period for a first refusal to submit to a blood, breath, or urine test; and providing that a fourth driving while under the influence offense or excessive alcohol concentration offense constitutes a felony.

ASSUMPTIONS:
Department of Justice:
1. An additional 300-400 fourth offense driving under the influence (DUI) convictions would be processed annually. This additional workload would be absorbed by existing department staff.
2. Due to a lack of available statistics, the department is unable to determine the number of additional convictions due to persons under age 21 driving with an alcohol concentration of 0.02 or more.
3. The cost of computer programming changes required to implement this bill is estimated at $7,200 ($6,600 for contracted services and $600 for computer processing time) in FY96 only.
4. The Highway Patrol Division would need to purchase 190 field alcohol analyzers at a cost of $316 each (total cost of $60,040) in FY96.
5. The bill requires the department to certify both the peace officer and the instrument used for preliminary alcohol screening.
6. The responsibilities of the Forensic Science Division would include:
   (a) initially certifying each instrument by calibrating it at the forensic science lab;
   (b) annual certification of each instrument;
   (c) repairing the instruments and re-certifying them after the repair;
   (d) certification recordkeeping to insure compliance;
   (e) training peace officers in the use of the instruments (in conjunction with intoxilyzer training after all officers have received initial training);
   (f) staff time in support of court challenges since prior experience suggests that probability initially with new instruments and new requirements.
7. Based upon assumption #6 and the assumption that the additional work required by the bill cannot be absorbed with existing staff, 1.00 FTE additional forensic scientist is needed at a cost of $49,906 in FY96 and $50,087 in FY97. The estimated cost is based upon the pay exception in effect for other forensic scientists. Operating expenses of $1,500 each year are for travel and training.

Department of Corrections and Human Services (DCHS):
8. On a fourth or subsequent conviction of driving under the influence, as defined by this bill, a person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than one year or more than 10 years, and by a fine of not less than $1,000 or more than $10,000.

(continued)

Dave Lewis 2-14-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Al Bishop 2-14-9
AL BISHOP, PRIMARY SPONSOR DATE

Department of Corrections and Human Services (continued):

9. The first six months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

10. There were 389 fourth or subsequent convictions for driving under the influence during FY94. It is assumed that approximately the same number of convictions will occur during FY96 and FY97.

11. DCHS has no way of determining the number of additional offenders who would be sentenced to a term of longer than one year which would be served at the Montana State Prison (MSP) rather than the county facility. The cost of the additional confinements at MSP would be $40.58 (FY94 actual) per day X 365 X the number of offenders sentenced to MSP. The MSP is presently operating at close to its maximum capacity and well over its designed capacity and may not be capable of housing the additional offenders.

Highway Traffic Safety Division:

12. Conducting preliminary alcohol screening tests is optional for law enforcment officers.

13. The bill may have inestimable long-term deterrent effects on activities addressed in the bill such as the sale or encumbrance of a vehicle subject to seizure or forfeiture, deferred prosecutions of DUI cases, the number of drivers rejecting blood, breath, and urine tests, and the number of fourth or subsequent convictions for DUI. The fiscal impact of these deterrent effects is not subject to reasonable estimate.

FISCAL IMPACT:

Department of Justice:

Expenditures:	FY96 Difference	FY97 Difference
FTE	1.00	1.00
Personal Services	49,906	50,087
Operating Expenses	8,700	1,500
Equipment	60,040	0
Total	118,646	51,587
Funding:		
General Fund (01)	58,606	51,587
Highways Special Revenue (02)	60,040	0
Total	118,646	51,587

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill could have a significant fiscal impact upon counties. As defined within this bill, the court may order that a term of imprisonment be served in another facility made available by the county and approved by the sentencing court. The facility may be, but is not required to be, a community based pre-release center as provided by 53-1-203, MCA. Estimated costs are $40 per day for each offender sentenced in this manner. There may be other long-term fiscal impacts that are less subject to reasonable estimate such as increased cost to immobilize or seize vehicles, sell forfeited vehicles, and increased revenue from fines and forfeitures.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There may be long-range deterrent effects that will result in some decline in fourth and subsequent convictions for DUI offenses and improved traffic safety. These effects are either definite nor subject to reasonable estimate.

- BILL NO -	REFERRED -	HEARING -	OTHER CONSIDERATION DATES -	EXECUTIVE ACTION/DATE/VOTE -------	REREFERRED ----	DATE READ
	2/06	2/09		TABLED ON 02/09 VOTE:		
SB0316	BISHOP, AL 2/07	2/15	PROVIDE DUI SENTENCING ENHANCEMENT FOR DUI	2/14 DO PASS VOTE:		2/15
SB0318	BENEDICT, STEVE 2/07	2/13	ESTABLISH STATUTE OF LIMITATIONS FOR ACCOUNTANT'S NEGL & BREACH OF CONTRACT	TABLED ON 02/14 VOTE:		
SB0333	BISHOP, AL 2/08	2/15	REVISE PROBATIONARY DRIVER'S LICENSE PROCEDURES UNDER DUI LAWS	3/15 DO PASS VOTE:		2/15
SB0340	CRIPPEN, BRUCE 2/09	2/16	AUTHORIZE LIMITED LIABILITY PARTNERSHIPS	2/16 PASS AS AMENDED VOTE:		2/18
SB0342	BARTLETT, SUE 2/09		LOCATE LAW ENFORCEMENT ACADEMY IN HELENA	VOTE:	FINANCE & CLAIMS	
SB0350	VAN VALKENBURG, FRED 2/10	2/15	EMPLOYER NOTICE OF THEFT FROM EMPLOYER BY PROBATIONER OR PAROLEE	2/15 DO PASS VOTE:		2/15
SB0353	HALLIGAN, MIKE 2/10	2/13	REVISE GUARDIAN AD LITEM IN FAMILY MATTERS/SPECIAL MASTERS IN CRIMINAL CASES	2/13 PASS AS AMENDED VOTE:		2/13
SB0387	BECK, TOM 2/27	3/04	CLARIFY WATER RIGHTS ADJUDICATION; EXPAND THE WATER CLAIM APPEAL PROCESS 3/4 SUB	3/16 PASS AS AMENDED VOTE:		3/07
SB0402	ECK, DOROTHY 2/15	2/16	MEDICAL SUPPORT ORDERS IN DIVORCE AND OTHER PROCEEDINGS	2/16 PASS AS AMENDED VOTE:		2/18
SJ0003	BENEDICT, STEVE 1/02	1/10	ASSERT STATES RIGHTS	1/17 PASS AS AMENDED VOTE:		1/17
SJ0006	BROWN, BOB 1/23	2/07	LEGISLATURE'S SUPPORT OF AND INTENT FOR THE CONFERENCE OF THE STATES	2/8 PASS AS AMENDED VOTE:		2/09
SJ0007	DOHERTY, STEVE		LEG AUDITOR TO DO PERFORMANCE AUDIT OF SUPREME CRT ADMIN OFF/CERTAIN SYSTEMS	2/15		

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN CHAIRMAN**, on February 15, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 237, SB 316, SB 333, SB 350
Executive Action:	SB 350, SB 237, SB 316, SB 333, SJR 7, SB 206

HEARING ON SB 350

Opening Statement by Sponsor:

SENATOR FRED VAN VALKENBURG, Senate District 32, Missoula, sponsored SB 350. He said the bill would allow the Department of Corrections to tell a new employer that a person (who is on parole) has a history of stealing from employers. He said it was a logical idea that employers should know about the prior thefts, but the Department of Corrections and Human Services parole staff is prohibited from providing that information to employers because it would violate the privacy of the probationer or

parolee. The sponsor said they need to be more concerned about the victims out there who are good enough to employ people who have already been in trouble with the law before and to try to protect them. He said he personally knew of three or four cases in which this has happened since he went to work in a county attorney's office. In one particular case, an employer in Missoula County lost over $50,000 as a result of theft by a person already convicted of theft from a previous employer. He urged passage of the bill.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked the sponsor if there was a fiscal note.

SENATOR VAN VALKENBURG said there was not. He said the only cost involved would be a phone call to the employer.

Closing by Sponsor:

SENATOR VAN VALKENBURG closed on SB 350 without further comment.

HEARING ON SB 237, SB 316 and SB 333

Opening Statement by Sponsor:

SENATOR AL BISHOP, Senate District 9, Billings, sponsored SB 237. He said the bill would make it a misdemeanor to have an open container containing an alcoholic beverage in a motor vehicle on any ways of the state open to the public outside of cities and towns. He said it was felt that cities and municipalities would deal with the issue on their own, as many already do. Excepted would be public conveyances that have been chartered for group use, the living quarters of a motor home, recreational vehicle or camper, or a paying passenger in a for-hire vehicle licensed under city, county, or state law.

Proponents' Testimony:

Attorney General Joe Mazurek, said that he and others at the hearing were going to testify on a package of bills, SB 237, SB 316 and SB 333. They are a part of the recommendation of a Task Force appointed by **Governor Racicot** and himself last June.

Opening Statement by Sponsor:

SENATOR AL BISHOP continued his opening statement after it was determined by the chairman, proponents and the committee that the three bills were related, and would be addressed in a group method.

SB 316, he said, would provide for a preliminary alcohol screening test by an officer who has a particular suspicion that someone is driving under the influence. This is a breath test that is not mandatory but the refusal to take it will cause the person to have their drivers' license suspended for a year. The bill would also create a new alcohol-related crime for drivers under the age of 21. A blood alcohol of .02 will subject them to the penalty provided. The rationale for this provision is that they are not supposed to be drinking at all. Any level of alcohol in the blood would be prohibited.

SB 333 requires alcohol or drug treatment to be ordered for first-time DUI offenders if a certified counselor concludes that it's needed. The bill would also stipulate that the offender could not be issued a restricted probationary license until the treatment is completed.

Proponents' Testimony:

Attorney General Joe Mazurek supported the package of bills, SB 237, SB 316 and SB 333. In 1993, he said, 194 persons lost their lives on Montana highways. 107 of those died in accidents involving alcohol. Generally over half of all the traffic deaths each year are accidents in which the driver was under the influence of alcohol or drugs. One statistic he noted was that last years' numbers showed 55 per cent of the highway fatalities in the last year were alcohol related, the highest percentage of the total in the last 10 years. In 1983 significant improvements were made in the driving under the influence of drug and alcohol laws. At that time the highway death toll decreased dramatically. It had been at an all-time high of 338 and dropped to 200. It is now hovering at or near that mark for the past ten years. He said the numbers were starting to creep up again and that prompted the legislation. The bills are aimed at target groups. The first one is teens who may be experimenting with drugs and alcohol and driving. They hope to adopt a zero tolerance standard, although it does not created a DUI offense. It deals with them on a similar basis as "minors in possession." Other aspects of the bills address social drinkers who are generally responsible but need a nudge to keep open containers out of vehicles. Another part of the package is the impact it would have on repeat offenders. This group is small in size, he said, but dramatically increasing. In the last 10 years the percentage of multiple offenders has gone from 23 to over 30 per cent. The percentage of second offenders has gone from 19 to 23 per cent. The third-time offenders has doubled from 4 to 8 per cent. He cited an example of a 8-time offender who was involved

in two fatal accidents in Lewis and Clark County. The Task Force recommended the inclusion a fourth-offense DUI felony, and the bills reflect that change.

As a result of the increasing DUI's and increased fatalities arising from those, he and **Governor Racicot** jointly, with the assistance of the Highway Traffic Safety Division, created a State DUI Task Force which met beginning last June. It included 14 Montana citizens headed by former Yellowstone County Attorney Harold Hanser, who has always been an advocate for stronger DUI laws. They worked collectively, took testimony from law enforcement officials from across the country and Canada, hired expert consultants and put together the package of bills. He said enactment of the bills would allow law enforcement officials in the state the ability to vigorously enforce and perhaps effectively deal with this deadly problem.

Joe Roberts, representing The DUI Prevention Committee, said he had been authorized by **Governor Racicot** to indicate his full support of the package of legislation before the committee.

John Campbell introduced his wife, Jill. They represented themselves. They testified that their daughter, Jana, was killed last August by a drunk driver. **Ms. Campbell** told the committee that they were not against drinking, but to ask their support in all of the bills. In Lake County last year, they had five deaths caused by drunk drivers, she reported. Two of them were close to them, their daughter Jana, and her friend, Anita. They were coming home from a rodeo when a drunk driver passed on a double-double line. Their car was hit head-on and Anita was killed outright. **Ms. Campbell** described the events of the night at the hospital and the subsequent death of their daughter. The doctor that was in charge of the same emergency room in Kalispell was the drunk driver who killed the girls. They also submitted written testimony. **(EXHIBIT 1)**

Harold Hanser, former Yellowstone County Attorney, represented himself and the State DUI Task Force. He explained the working of the task force. There is nothing in the proposed legislation that does not exist in some other jurisdiction. A technical team from the National Department of Transportation came to Montana and reviewed the DUI laws and had three pages of shortfalls as compared to other jurisdictions. He said that while Montana DUI problems have remained consistent, other states with higher traffic volumes have had decreases. He said the laws in Montana have thus far not allowed for a effective deterrent. A deterrent will work only if people believe something will happen and the penalty will bite. In Montana, he felt, people had no deep feeling that they would be finally convicted of DUI.

Mr. Hanser said that we now know that the blood alcohol content can be accurately measured and tested. We also know that there is a direct relationship between any individuals' ability to operate a motor vehicle safety with the amount of alcohol in the

system. The impairment starts in the area of .03, he said, and that is why the federal government is going to zero tolerance for people driving commercially. He said that we have a presumptive level at .10. Many states have moved that level to .08. Some are talking about going lower. The average arrest in Montana is at .18. A person at a blood alcohol level of .18 is visibly impaired, or drunk. The most essential tool in this legislation would be the ability to do the on-site testing. He said that the miniature breathalyzers would resolve the issue right on the spot after the driver is stopped by an officer for reasonable suspicion. Without a BAC (blood alcohol content) test, he said, prosecution is a major lawsuit. Many of the cases take a year or more to prosecute and many just fall through the cracks and "go away." In this proposed legislation, the driver can refuse the test, and the penalty would be the same as a conviction from the standpoint of the license. It would be suspended for a period of six months. In Canada, if a person refuses the on-site test, the penalty is the same as conviction. They take the drivers' license and have the car hauled away. In North Dakota, the license is administratively revoked for one year on first offense, two years on the second offense, and three years for subsequent. There are provisions for habitual offenders in these new bills, too. He said there had been problems with the seizure of the vehicle law enacted last session in that people transfer their vehicles to someone else pending litigation. He said that in Canada the first offense is seizure of the vehicle for 30 days. Second offense for a person who continues to drive without a license is forfeiture. He said that non-prison, non-jail sanctions against vehicles and drivers' licenses are the most effective.

Peter Funk, former Assistant Attorney General, lawyer, Helena, said he had worked with the State DUI Task Force to draft this legislation. He had worked with the Motor Vehicle Division when he was attached to the Attorney General's office, so he had experience with existing laws and drafted these bills with a view toward existing structures.

SB 237 is straightforward, he said, and was taken almost word-for-word from the Washington statute. It makes three things a misdemeanor: 1) drinking, 2) possessing, and 3) storage, of open containers of alcohol illegal within motor vehicles. It includes an exception for storage as long as an open container is not stored in an area that is regularly available for the passengers. It would also have a standard misdemeanor offense penalty provision in it. It also excludes areas within the boundaries of cities and towns. This is done in recognition of cities and towns to legislate in this same area.

SB 316 is a bill which combined many ideas into one package, he said. He discussed the preliminary breath testing provision. He said it was an implied consent scheme like the existing scheme, wherein the law enforcement officer has the ability to ask for the test, the driver may refuse, but if the driver refuses, there

are fairly severe sanctions. The bill refers to the existing statutes in terms of procedures and sanctions involved. Currently, a law enforcement official cannot ask for a blood sample until after the arrest has been made. The purpose of the Preliminary Alcohol Screenings (PAS), is to give the officer some alcohol concentration information on the driver in order to help them make up their mind whether to proceed to an arrest. The existing law presumes a person under the influence at .10 or over. The trigger for the stop is a technical legal phrase called, "particularized suspicion." This is the standard for investigative stop and well-recognized in the Supreme Court. It means if the officer has some facts on which they can reasonably suspect that a person is under the influence, it meets the test of particularized suspicions. Examples would be swerving and driving erratically. There is an appeal provision built into that section, as well, that would reference the existing law, so that if the driver refuses the test, it would get into district court very quickly. The rest of the procedural steps in the implied consent law presently are built in to the bill. The PAS would require the Department of Justice to certify both officers and the devices that are used before they are used.

Section 2 would create a new criminal offense in the state, he said, that makes it unlawful for a person under the age of 21 to drive with a blood alcohol concentration of .02 or more. That is the lowest level that the machines can be accurate. Section 3 of the bill is designed to prohibit transfers of vehicles that are subject to forfeiture. Section 4 would make it clear that a prosecution for a DUI may not be deferred. Section 5 amends existing law. This would deal with people who continue to drive when their license is suspended or revoked because of DUI. If the license is gone because of drinking, there would be additional sanctions. On first conviction, there would be a 30-day vehicle seizure and on a second or subsequent conviction, the vehicle would be forfeited. Section 6 of the bill takes the existing implied consent law and changes the penalty for a refusal from 90 days to six months. If a person is convicted of DUI, they would face a 6-month drivers' license suspension. If they refuse a implied consent test, they only get a 90-day suspension. He said it was the feeling of the Task Force that a test refusal ought to be at least as severe as a sanction as being convicted of the first offense. The idea is that more people will take the test, because there isn't much incentive the other way. Section 8 is the DUI sentencing statute. It makes three primary changes: 1) It creates a felony-level offense if the offense is a fourth, or subsequent offense. 2) Convictions would be added over a person's lifetime, if the offense is a fourth, or subsequent offense. Montana presently has a five-year gap. Persons with convictions earlier than five years are sentenced as a first-time offender; previous convictions are disregarded. 3) The DUI offense may not be deferred. Section 9 would provide that the same three changes mentioned are made in the excessive alcohol concentration offense, in other words, fourth offense felony, convictions for a lifetime and no

deferrals. Two other changes include expunging of records to address the five-year gap. Presently the Department of Justice takes all records relating to that particular defendant before the gap, and destroys them. They proposed to make that information confidential criminal justice information and public disclosure would not be allowed without a court order. It would exactly match the language of the DUI statute. The second provision would say that a person convicted of a concentrated alcohol offense, any earlier DUI's would be counted the same as a BAC offense.

SB 333 is focused on the treatment of DUI offenders. Presently there are a multitude of different mandates involving treatment. First-time offenders have to do an alcohol information course and may or may not be ordered to undergo treatment. Second or subsequent offenders must undergo treatment. This bill would change the provisions to read: 1) If the offender is found to be chemically-dependent on a first conviction, they must undergo treatment. 2) If the courts order treatment, they must order it based on the opinion of the certified chemical dependency counselor and that counselor must use accepted and adopted statewide guidelines. The language would also give the judge some guidelines when facing two counselors. 3) Changes are designed to tell the Department of Justice they may not issue probationary drivers' licenses until the person has COMPLETED whatever treatment is proscribed.

Nancy K. Jovin, Ravalli County DUI Task Force Coordinator, said she got the job as a result of a drinking/driving accident herself. She was a bride and a widow in the same day when she and her new husband were involved in an accident. She had 18 reconstructive surgeries at a cost of hundreds of thousands of dollars. She said that the cost in lives and dollars in Montana is immeasurable from drinking drivers. **Ms. Jovin** said the open container law was past due. She discussed and was in agreement with the provisions of the intended legislation. She submitted written testimony. **(EXHIBIT 2)**

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Darryl Bruno, representing the Department of Corrections and Human Services, said that the Department stands in support of SB 316, Section 2 and view it as a very good instrument for the DUI program. They hoped it would reduce the number of first offenders. SB 333, by requiring the first offenders to attend treatment, will reduce the number of repeat offenders, he said. Ultimately, it would reduce property and medical damage, loss of life and probably do a part in reducing some of the overcrowding in the jails. He also submitted written testimony. **(EXHIBIT 3)**

Colonel Craig Reap, representing the Montana Highway Patrol, said that their organization supported all of the changes and new laws regarding DUI offenses. They were part of the Task Force as well. He said it was frustrating to law enforcement officials to

meet and greet the same individuals on a repeat basis. He said that in particular, the portable breath testing device, will give them another tool to use. He urged support of the bills.

Mark Cady, Police Officer, Billings, and a member of the DUI Task Force, voiced his support for the bills. He said he had been a victim of a drunk driving accident. He had investigated over 50 fatalities in his career and every one of them involved a drinking driver. The portable breath analyzer would be a very valuable tool, he said, in the fight against drunk driving. He discussed the revocation of the license penalties. Currently, if a person is convicted of a DUI, their license is revoked. If a person is a habitual offender, their license is revoked. This bill would provide for the impounding of the car or making it inoperable. The second offense would cause forfeiture. He stated that the drivers' license does not turn the key to the car. He said the proposed legislation package would be a help to police officers and all Montanans.

George Bonini, representing the Montana Traffic Education Association, confirmed that the Association supported the legislation. They had a particular concern with SB 237 because of the increase in young people drinking in vehicles. They hoped the open container law would address that problem. He urged a Do Pass resolution.

Clarence Brazil, Polson, represented himself. Mr. Brazil said that Montanans seemed to think they had the God-given right to drive drunk. He quoted the figures from SB 237, saying Montana recorded 7,000 DUI convictions annually. He said it was close to 10 per cent of the population. He said there was a disregard for loss of life. The suspension of the drivers' license was important to him in regard to multiple offenders. He said many of the drunk drivers end up with suspended sentences and serve no jail time.

Peggy Wheeler, represented herself. Ms. Wheeler related that her daughter, Anita, was one of the girls killed in Kalispell by a drunk doctor. She said people convicted of negligent homicide in her area were given 90 days with 30 days in treatment and 60 days in jail. She felt it was not enough. She asked the committee to get the drunk drivers off the road.

Bill Ware, Police Chief, Helena, also represented The Association of Police Chiefs in Montana, and served on the DUI Task Force. He supported the three-piece legislative package. He stated that in the Helena area up to 50 per cent of the DUI convictions were repeat offenders. He said the offenders were going through the system again and again.

Jerry Archer, representing the Billings Police Department and member of the DUI Task Force, said that since January 1, he had responded to three fatality accidents, two involving alcohol. It has to stop, he said.

Troy MCGee, Captain, Helena Police Department, represented the Montana Police Protective Association. He said the membership was made up of approximately 450 police officers around the state. The Association strongly supported the bills, he said.

Francie McLean, Gallatin County DUI Coordinator, asked to add Gallatin County's support to the package of legislation. She submitted five pages of signatures to support the bills. **(EXHIBIT 4)**

Tom Huddleston, representing the Helena City Commission, Lewis and Clark DUI Task Force and himself, submitted the following letter. **(EXHIBIT 5)**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN stated that he was on the Task Force. The juvenile sentencing laws were not going to be changed but rather the thresholds would be changed. The quickest way to get to a juvenile was taking the license away for a longer period, he said. He said it was 90 days. He asked **Mr. Hanser** if the Task Force had considered extending juvenile laws as well?

Mr. Hanser said they did not. The main emphasis, he said, was to get to the zero tolerance.

Peter Funk said the idea was to use the minor in possession charge. There was some consideration given to having a youth sentenced under the DUI statute if they were convicted of the new offense included in the bill. But because of the difference in the blood alcohol level, they did not feel that it was appropriate to have the same sanction that an adult would have at .10. The first offense under the statute is a 90-day confiscation of license which would be done by the local sentencing judge. The Motor Vehicle Division in Helena would become involved on a second conviction in terms of a formal suspension.

SENATOR HALLIGAN asked **Mr. Funk** if the juveniles could get a probationary license during that time. **Mr. Funk** thought so. The senator further inquired about breath testing and blood testing. **Mr. Funk** said he did not intend that a blood test would be administered, but a portable breath test would. SB 316 would not authorize a urine or blood test, he said.

SENATOR HALLIGAN asked if the machines were sophisticated enough to determine the .02 for juveniles and if the results would not be contested in court? In the past, defense attorneys had claimed the breathalyzers were not accurate, he said.

Mr. Funk said the people at the crime lab had maintained they were accurate from .02 and up, which is the criminal level in the new youth statute. There would be a period of time to certify the machines, making sure the State Crime Lab was comfortable with their use. Many other states use them now.

SENATOR HALLIGAN asked if there was enough money to make sure they were accurate. Also, he asked **Mr. Hanser** about the third offense as opposed to the fourth offense as a felony. Are other states doing this on the fourth offense? Where did they reach that threshold?

Mr. Hanser said they started with the enhancement. There was so much interest for a fourth offense, but he considered it a judgement call. On the device discussion, he said that the field machines were used in California and allowed in court. In Montana, the hand-held devices would be a preliminary action and people would be allowed to take the test on the larger device.

SENATOR LORENTS GROSFIELD asked **Mr. Funk** about SB 237, 1B and 1C. He asked what the difference was between possess and keep.

Mr. Funk said that possession was a harder issue to prove. In order to "possess" under the law, a person has to have the ability to control, and the ability to terminate control. It would be a natural progression from drinking, to possession, to storage, with drinking being inside the body. Storage is another angle to have a prosecutable offense, he said, if possession or actual drinking cannot be proved.

SENATOR GROSFIELD said they could keep it in the trunk, but they could not possess it in the trunk. He asked if anything could be in the vehicle as far as possession goes.

Mr. Funk said it was true. He did not know how a person could possess something in one of those areas that is not available to the passengers unless you are also in that area. He thought possession was only to be used where the container is seen in the hand.

SENATOR GROSFIELD asked if he planned a kegger and he was the designated driver, and they put their empties and some leftover liquor in the car and are heading home, would he be in trouble even if he had not had anything to drink?

Mr. Funk said he would have a problem under the storage paragraph.

SENATOR GROSFIELD said there would be no incentive for a designated driver status.

Mr. Funk said it would be true, if they had an open container. He said he hope the designated driver concept would be used beyond the transportation of alcoholic beverages, perhaps for

people traveling home at night without drinks with them. Clearly, the bill would make it unlawful to have alcoholic drinks in the passenger compartments of vehicles. It would apply to designated drivers or anybody driving.

CHAIRMAN BRUCE CRIPPEN asked if bottles of alcohol were transported from one house to another in the trunk, would it violate the provision?

Mr. Funk referred to Subsection C, following "unless" on Line 21, which says that open containers of alcohol can be transported.

CHAIRMAN CRIPPEN followed with, "if the registered owner is not present in the vehicle."

Mr. Funk said the qualifying language applied only to the phrase, "or the driver." The person that is responsible for the storage violation is either the registered owner or the driver.

SENATOR GROSFIELD asked about the kegger example. He said what was not consumed should be dumped on the ground.

Mr. Funk said they could put it in the trunk.

SENATOR GROSFIELD asked if an empty can may contain a milliliter of beer. Would that be an open container in a technical sense?

Mr. Funk said it may be something that should be clarified. He did not disagree with that, but thought that a police department or prosecutor would not want to go further with a suit based on that information.

SENATOR STEVE DOHERTY asked about a situation of adults and children in a Suburban in which beer and pop was mixed in a cooler.

Mr. Funk said the cooler had better be in the back end.

CHAIRMAN CRIPPEN asked if having a beer out in the wilderness was in violation as long as it happened in the car?

Mr. Funk said it would be correct. He added that there was nothing in the open container that would allow a law enforcement officer to go in that cooler (on **SENATOR DOHERTY'S** question) or to open a closed cooler or package inside a vehicle. It does not give law enforcement any greater ability to look in things than they already have now.

SENATOR GROSFIELD asked to follow-up. He said on Lines 22 and 23 of Subsection C, it says the utility or glove compartment is considered to be within the area. He said those two compartments are sealed, so there was an implication that an officer would be looking into those. And he wondered why they were even in the bill?

Mr. Funk said they were there because they were part of the Washington statute. He would not read the language as giving police an increased ability to conduct searches and seizures. He said it could be stricken.

SENATOR LARRY BAER said that search and seizure was covered by present law. He said people had better know the law. In a Suburban, they should store the alcohol in the back, away from the driver.

SENATOR BISHOP asked **Mr. Funk** about the kegger question. On Line 17 of SB 237, Page 1, it says, "where contents are partially removed," and he wondered if a sharp defense lawyer could pounce on that?

Mr. Funk said sharp defense lawyers will seize on every word of the bill in defending their client. He said they could perhaps come up with finely-tuned language.

SENATOR BISHOP asked if it would help to say, "fully," or "completely," or "partially"?

Mr. Funk said it was up to the committee.

Valencia Lane stated that the point of the bill was to prohibit open containers in the car, meaning you are not supposed to be drinking as you are driving. She did not think that the intent of the bill was that a person was not to have empty cans in the car, rather open containers. She did not know if they should amend the bill to include empties.

Mr. Funk said a sentence could be included that said, "this section of law is not intended to include empty beverage containers."

CHAIRMAN CRIPPEN asked if all incorporated cities and towns in Montana had open container laws?

Mr. Funk said it was not the norm.

CHAIRMAN CRIPPEN asked **Attorney General Mazurek** if the state could supersede local law in cities and town?

Attorney General Mazurek responded that most major communities had open container rules. In a number of smaller communities, they waive them for events, such as the Augusta Rodeo, he said. He said the state did clearly have the authority, but they may want to consider these special events.

Captain Troy McGee said that the open container law in Billings covered all public property in addition to vehicles. These bills would apply only to vehicles. Local control is generally the public property type of control, he said, like in a park.

SENATOR BISHOP asked **Mr. Funk** about Line 13, Page 1, of Subsection 237. He said that it mentions an incorporated city or town. He asked about Reedpoint, which is not an incorporated town, and how the bill would relate to their sheep event?

Mr. Funk said that the bill would cover unincorporated areas. He said unincorporated cities and towns do not have the authority to legislative in this area. They cannot pass ordinances.

SENATOR GROSFIELD referred to SB 361. He asked about the certification of devices by the Department as mentioned on Page 2, Subsection 8. He asked if they were certified periodically?

Mr. Funk said the certification would remain in effect as long as the instrument make and model did not change.

SENATOR GROSFIELD asked a technical question on Subsection 2 on the .02 alcohol count. He quoted current statute, 401, Subsection 4A, "if there is less than .05, it may be inferred that the person was not under the influence." He asked if that would be inconsistent?

Mr. Funk said he did not think so. He said they were not making any statement about whether a person is "under the influence." They were just referring to the blood alcohol level.

SENATOR GROSFIELD referred to Page 4, Subsection 6, regarding seizure of the car, "owned and operated by the convicted person." He asked if that excluded a car that was borrowed. **Mr. Funk** said that was correct. The senator further inquired about multiple DUI offenders who might register the car in their wife's name.

Mr. Funk replied that the forfeiture law was passed in 1991. He referred to Line 21, concerning joint ownership. He said that type of scheme exists in the language and they had attempted to build it into these new bills. It says that joint ownership shall not be barred to these types of actions, but gives the court an "unless", or an out, so that the car would not be taken from an owner at the judge's discretion. Joint ownership generally should not be a bar to those types of actions, he said.

SENATOR GROSFIELD asked if the 10-time DUI offender had his own car, yet registered that car in his wife's name, would he be able to prevent the court from taking the car?

Mr. Funk said this was correct, unless it was registered in a joint situation. If the car is registered in any other parties' name, and the drivers name is not on that registration, that car is not subject to this process.

SENATOR GROSFIELD referred to Page 5, Line 10. He asked about the test for drugs, "may not be given."

Mr. Funk replied that it was part of a compromise reached by the last legislature to authorize drug testing.

SENATOR GROSFIELD asked about the .01, .02., .05 classifications of consumption and wondered what it would take (in terms of 3 beers, 4 glasses of wine, etc.) to register these amounts. Several of the proponents answered that it would depend on the size of the person, body weight, food intake, and many other variables.

Albert Goke, Minister of the Highway Traffic Safety Division, said that for a minor, typically one beer would make them show in excess of .02.

SENATOR GROSFIELD asked about the reasons behind a temporary permit on Line 23.

Mr. Funk said the intent was to enable someone whose license is taken to exercise their right to appeal. It is a Constitutionally-protective mechanism more than anything else, that allows a person a time period in which to address filing an appeal. He said they were taking a license, which has been held to be some form of a property right, without any kind of a hearing. It allows for a hearing or a fact-finding body as fast as possible after the license has been taken.

SENATOR GROSFIELD posed a problem with a person driving drunk on a 72-hour permit. Would the person just get another one, he asked?

Mr. Funk said he was not aware of a process for taking away the 72-hour permit.

SENATOR ESTRADA discussed the alcohol content in a glass of wine with **Officer Cady.** It was ascertained that too many variables would exist to determine what the blood count would show. She liked the bills, but wanted assurance that they would be done right.

SENATOR LINDA NELSON asked if they had enough portable breath testing devices to implement the bill? And therefore, would they need a fiscal note, she asked?

Mr. Funk answered that nothing in the bill requiring them to have the equipment and they understood it would take time. They had some now, he said, and $100,000 had been allocated for the 1996-97 for the Department of Justice to help equip the officers with the devices. The devices cost about $500.

{Tape: 2; Side: A; Approx. Counter: 00}

SENATOR REINY JABS asked about the forfeiture of a parents' car

if a teenager violated the rule?

Colonel Craig Reap said it would not apply.

SENATOR DOHERTY asked for a definition of motor vehicle. Also, he wondered if a boat, tractor or snowmobile would be covered.

Mr. Funk said the definition was broad, but would not include tractors, snowmobiles or boats.

SENATOR DOHERTY asked about the public safety issue and wondered why they did not deal with all the high-powered machines.

Mr. Funk agreed that perhaps it should be done, but was certainly not written in this package as it was.

Closing by Sponsor:

SENATOR BISHOP closed on Senate Bills 237, 316 and 333 without further comment.

EXECUTIVE ACTION ON SB 350

Motion: **SENATOR GROSFIELD MOVED THAT SB 350 DO PASS.**

Discussion: **CHAIRMAN CRIPPEN** was concerned that the person would never get another job. He said he would probably vote for the bill anyway.

SENATOR SUE BARTLETT saw some irony in the bill. She said a bill in the last session regarding stalking, **SENATOR VAN VALKENBURG** opposed that because of increased workload and potential liability. What would happen if the department slipped up and failed to notify an employer?

Vote: The **MOTION CARRIED** on an oral vote, with **SENATOR BARTLETT** voting, "no."

EXECUTIVE ACTION ON SB 237

Motion: **SENATOR BISHOP MOVED THAT SB 237 DO PASS.**

Discussion: **SENATOR NELSON** said she was concerned about hunters. She had some sympathy with people not being able to have a drink when they are out in the country. She also expressed some concern over a football game, perhaps people would want a little schnapps and hot chocolate. The bill would require the people to sit outside. She suggested a change to "moving" vehicle.

SENATOR RIC HOLDEN said the countryside may become a dump ground for the empties people will feel forced to throw out. He said the bill would take from the idea of a responsible designated

Motion: **SENATOR GROSFIELD MOVED TO INSERT THE WORD, "MOVING" BEFORE "MOTOR VEHICLE" ON LINE 14 AND 15.**

Discussion: **Mr. Funk** said it would be pretty on paper but would not work for the officers on the street if the phrase would not have some kind of defined meaning. Could they have a sip at the red light, he asked?

SENATOR JABS said they were trying to discourage drunk driving. If they would let a teenager sit in the K-Mart parking lot and drink like mad, it would seem to defeat the purpose and send the wrong signals to everyone.

SENATOR HOLDEN said they would be in violation because they were minors.

SENATOR HALLIGAN said the bill would be in jeopardy if they did not put "moving" into the language.

Mr. Hanser commented on what the Task Force intended. He said the message was for people not to operate a vehicle while drinking. The main idea was simply to reduce the hazard. He said they were trying to change the Montana attitude that you can't hunt unless you drink. He hoped not to be hunting next to one of the drinkers. He said people did not want to fish without drinking or go to the basketball game without drinking. The message was that people cannot do that in their car. He strongly supported the language, "in transport." It would take into account the vehicle either in motion or one that is an immediate problem because it will become in motion because of the circumstances surrounding it.

Dennis Paxinos, Yellowstone County Attorney, also urged the same language. Even if a patrolman cites an adult for drinking at a football game, a prosecutor would be loathe to press that case. The intent of the law would be drunk driving and some discretion should be given to prosecutors for good faith.

Motion/Vote: **SENATOR BAER MADE A SUBSTITUTE MOTION TO INSERT THE WORDS, "IN TRANSPORT," RATHER THAN, "MOVING."** The **MOTION CARRIED** on a roll call vote with 6 members voting aye and 5 members voting no.

Motion: **SENATOR BISHOP MOVED THAT SB 237 DO PASS AS AMENDED.** The **MOTION CARRIED** on a roll call vote with 7 members voting for the bill and 4 members voting against the measure.

EXECUTIVE ACTION ON SB 316

Discussion: **CHAIRMAN CRIPPEN** said that the only test that could be given would be a breath test under this bill.

Motion: **SENATOR BISHOP MOVED THAT SB 316 DO PASS.**

Discussion: **SENATOR DOHERTY** said that the fiscal note said it could have a significant impact on the counties. This bill is a very large, unfunded mandate to the counties to provide for pre-release centers, for new vehicles, etc., and they were not providing the funding. However, he said he was in favor of it.

CHAIRMAN CRIPPEN said they could hold off on the second reading on the floor. This is a preliminary step, he said. .

SENATOR BARTLETT asked about the breathalyzer equipment. She wondered if the de-earmarking bill took out the currently earmarked statutory appropriation put in the previous session?

Al Goke stated that last session an amendment was made to the DUI reinstatement bill which had a $100 reinstatement, to provide that $50 would go the general fund, and the other $50 would go to the DUI Task Force. There is a remainder because all counties do not have DUI Task Forces. Up to $50,000 of the remainder goes to the State Crime Lab to help with the maintenance and purchase of alcohol testing devices. He said $100,000 was available each year for equipment and $200,000 per year would go to the DUI Task Force. He reminded the committee that each community would probably give a good deal of support to make the bill work.

Mr. Paxinos had introduced a bill saying that for every DUI conviction, a $15 surcharge would be assessed to come back to the arresting law enforcement agency. That money would also be used for DUI equipment.

SENATOR BARTLETT said last session they had gone through recognizing there is a breaking point on fine, at which they have no effect on behavior.

Mr. Paxinos said it was not intended to break anyone, but to provide an extra $15 to buy video equipment to detect DUI. It would be effective in reducing the cost of going to trial, he said.

SENATOR GROSFIELD said if the program were de-earmarked, it would not make a difference. The local DUI forces would not have a problem getting their funds before other activities.

SENATOR BARTLETT said that there were problems in the past, which is why they came in requesting earmarked funds for alcohol testing equipment.

SENATOR HOLDEN asked about Page 4, Line 24. He wondered if low income people would be hit pretty hard in taking an asset, such as a car, on second offense.

SENATOR DOHERTY said that the language on hardship would provide an out for an innocent owner.
{Tape: 2; Side: B; Approx. Counter: 00}
On the DUI issue, he said, whether or not a person had money,

they would have to pay the piper on a second offense.

CHAIRMAN CRIPPEN asked if **SENATOR HOLDEN** meant that those who can afford it will suffer the consequences of their actions, but those who cannot afford it ought not to be able to suffer the consequences of their actions?

SENATOR HOLDEN said it would enter in, certainly.

CHAIRMAN CRIPPEN raised the question if a low income person should be given another chance to hit somebody on the highway.

SENATOR HOLDEN said they intended to take a lethal weapon away from a drunk driver. But if they confiscated cars from median-income people, would they in some way be increasing welfare rolls by rendering people unable to work? Would they lose their jobs?

SENATOR JABS said there were car pools, friends, neighbors and horses.

SENATOR BAER said that after the first couple of offenders are punished and into the newspapers, this could be one of the most powerful deterrents for second offenders.

SENATOR HALLIGAN said the forfeiture of the car would apply only to second offense of driving while suspended, not merely second offense DUI.

CHAIRMAN CRIPPEN said by then their insurance probably had been lost as well. He said it was poor public policy to have those people driving anyway.

Vote: The **MOTION THAT SB 316 DO PASS CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON SB 333

Motion/Vote: **SENATOR BISHOP MOVED THAT SB 333 DO PASS.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON SB 212

Discussion: **SENATOR HALLIGAN** asked how the committee felt about an amendment to provide a notice to the non-party by regular mail when the answer is filed that they had been mentioned in a lawsuit. He thought the people would like to know, even though they cannot intervene, and they could contact the plaintiff to defend themselves. He said **Mr. Alke** had no objections.

EXECUTIVE ACTION ON SB 206

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2-15-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

February 15, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 316 (first reading copy -- white), respectfully report that SB 316 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-15-95
BILL NO. SB 237, 316 & 333

I would like to start out by saying that I am not here to tell you all not to drink. We like to go out and have a few drinks now and then. We listen to the band and meet with friends, but we walk or else one of us doesn't drink.

I am here to ask you to support Senate Bills 237, 316, and 333. As you know all three of these Bills are designed to strengthen and eliminate loopholes in existing D.U.I. laws. A good example would be the use of hand held Breathalizers for Policemen, also I agree with the .02 Blood Alchol level for minors. Montana is way behind the times without an open container law. I especally agree with the Courts being able to use all previous D.U.I. convictions instead of erasing them after 5 years.

In Lake County alone, last summer we had five deaths caused by Drunk Drivers. Two of the deaths were very close to Us, My daughter Jana and her friend Anita Myers. They were comming home from the Rodeo in Kalispell at about 10:30 P.M.

when a Drunk Driver went to pass over a double-double yellow line. They didn't have a chance! He hit them head on going between 80 and 90 Miles Per hour. Anita died at the scene, Jana was unconscious and was flown by helicopter into Kalispell.

Unless you are a parent and have recieved one of these Midnight phone calls you will never know the fear, pain, and anguish that grips your heart.

They didn't tell us much over the phone, so the one hour drive to Kalispell was <u>hell</u>. Your first thought is that this can't be happening to Us. We are suppose to be leaving on vacation in the morning, everything is packed and ready to go.

When we got to Kalispell and the Doctors finally came in to tell what was happening, He said the Cat Scan showed that her major organs were OK, There were no broken bones but She had sustained major head injuries from the sudden impact even though Jana was wearing her seat belt.

EXHIBIT 1
DATE 2-15-95
SB 237, 316 + 333

The Doctor told us we could go in and see her in a minute. Part of me wanted to run right in there, but part of me didn't. I didn't want to see her hooked up to all those machines, lying there so helpless. The doctor then told us we should be with her because it might be the last time we see her alive. We went in, I hadn't cried much yet but seeing her unconscious like that tore my heart out. I managed to tell her I loved her and that she was strong and could beat this. Later we broke down. The next two days were a living Hell. Jana Died August 21st because the Doctor that was in charge of that same emergency room that treated her decided to drink excessive amounts of alchol and drive his truck!

John Campbell

Jan Campbell

4P

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-11-95
BILL NO. SB 237, 316, 333

Nancy K. H Jovin Ravalli County DUI Task Force--Coordinator
402 N.2nd
Hamilton MT. 59840

SB 237- Open Container Law

My feeling on this bill and the ones to follow are long overdue. Montana seems to have "The Good ole Boy"additude. "Well maybe Joe has a drink now and then." Well that's fine for Joe as long as he does not get behind the wheel of a automobile. Drinking and driving should be thought of as a CRIME..not a social problem. Being impaired and driving is a crime. We are losing our neighbors, friends, and families because of this casual additude. Let's show the people of this stat that we care. We care enough to be tough on drinking and driving. That means that it will be treated like the crime that it is, not just someboby's recreational time turned bad. This is a crime and should be treated as such. Joe can wait until he is out of his car to have a cold one. With the exceptions, (i.e. chartered, for-hire vehicles, motorhomes and RV's.) Joe may still enjoy recreation, but not while endangering others.

SB 316 Section 1

I am in agreement with the preliminary testing to help determine 'probable cause" My questions come in Section 1 Subsection 8. that requires the department to certify both the devices and the operators before preliminary tests may be conducted. First, do we have such certified devices and the operators.Before we pass Laws that will require these things maybe we should investgate that. Second how often will devices and officers need to be recertified?Are we putting the horse before the cart? As I have said I am in favor of this as soon as these questions have been answered and adhered to.

SB 36 sec. 2

I am adamantly for this section of this bill.
Youth and alcohol do not mix. That's why it is alreadt a law. They drink, they drive, they injure themselves and others if they are lucky, or they die. They lack experience just driving, let alone add a drink or two. This part of the bill directly relates to SB 237, The open container law. the place where youth drink most frequently is ina car. Both these two bills are a great deterant to our drinking and driving problems.

SB 36 sec. 3

In 1993, the legislature provided for the forfeiture of vehicles driven by people who are three-time offenders. When itcomes time to enforce this law the offender mo longer owns a car.This law is a must if we are realisticly going to enforce a law already in place. Subsection 3 Making a transfer in violation of the section a felony offense with hefty fines and jail time should be significant enough to stop this practice.

SB 316 sec. 4

Great.. Lets eliminate the possibility of deferred prosecution. The victums of these offenders have lost their choice [illegible] offenders have [illegible]

41

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-15-91
BILL NO. SB 333

SB 333 Testimony

This bill introduced by Senator Bishop is supported by the Department of Corrections and Human Services (DCHS) Alcohol and Drug abuse Division (ADAD).

Requiring 1st time offenders, **who are chemically dependent, to go to treatment**, will reduce the number of repeat DUI offenders by intervening in there lives earlier. If we reduce the number of repeat offenders we should reduce the loss of life and property damage and play a part in reducing the over crowding in jails as repeat offenders have longer jail times.

DCHS/ADAD is the agency responsible under 53-24-208 for approving the facilities eligible to provide the DUI alcohol information course. ADAD also currently develops the diagnosis and placement rules (standards) **referred to in this bill (61-8-714 (4))**, all certified counselors would be required to follow.

The department is also the agency given legislative responsibility for certifying chemical dependency counselors who determine if the 1st time offender is chemical dependent.

Passage of this bill will reinforce the message that you don"t drink and drive.

Respectfully submitted

Darryl Bruno

Darryl L. Bruno, Administrator
Alcohol and Drug Abuse Division
Department of Corrections and Human Services

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2-15-95
SB NO. SB 237, 316, 333

Gallatin County

DUI TASK FORCE

104 East Main—Room 313 First Bank Building
Bozeman, Montana 59715
406-585-1492

Education • Awareness • Enforcement

Exhibit No. 4 includes 5 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

February 14, 1995

Judiciary Committee
Montana Senate

To Whom It May Concern,

The Gallatin County DUI Task Force would like to express its strong support of Senate Bills 237, 316 and 333. Senate Bill 316 in particular is vital to the effort to make Montana roads and highways safe from impaired drivers.

During the Montana Winter Fair held in Bozeman in January of this year, our Task Force did a week-long DUI education program for fair patrons. We provided information and rationale for the legislation contained in Senate Bills 237, 316 and 333. The support for strong DUI laws and strong DUI enforcement was overwhelming. Attached to this letter are sheets containing names and addresses of registered voters who wanted legislators to know that impaired drivers must be kept off Montana roads.

People are particularly outraged that multiple DUI offenders are still driving and killing innocent people. Impaired drivers should be held responsible for their actions. Please support this effort for more effective DUI laws.

Francie McLean

Francie McLean, Coordinator
Gallatin County DUI Task Force

DUI LEGISLATION TESTIMONY

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-15-95
SB NO. SB 237, 316, 333

Submitted By: Tom Huddleston
Representing: Helena City Commission
Lewis & Clark DUI Task Force

MR. CHAIRMAN. MEMBERS OF THE COMMITTEE. I'M HERE TODAY TO SPEAK IN FAVOR OF THE DUI BILLS AND ALL LEGISLATION THAT STRENGTHENS ENFORCEMENT AND DENOTES APPROPRIATE CONSEQUENCES FOR DUI INFRACTIONS. I COME BEFORE YOU ON BEHALF OF THE HELENA CITY COMMISSION AND THE LEWIS AND CLARK DUI TASK FORCE. I'VE BEEN A MEMBER OF THE CITY COMMISSION FOR SEVEN YEARS AND CHAIRMAN OF THE COUNTY TASK FORCE FOR YEARS.

IT SHOULD BE OBVIOUS WHY I WOULD ENCOURAGE ENFORCEMENT AND CONSEQUENCES FOR REPEATED CONVICTIONS OF DUI LAWS. DRUNK DRIVING IS A SERIOUS PROBLEM IN OUR STATE AND DRUNK DRIVERS KILL AND MAIM. REPEAT OFFENDERS IGNORE THE IMPOSED CONSEQUENCES AND BECOME UNINSURED AND UNLICENSED, BUT REMAIN DRIVERS WHO DRINK. TOO MANY OF US CONTINUE TO SEE THIS AS A SOCIAL PROBLEM AND SHAKE OUR HEADS AT THOSE WHO CONTINUE TO CALL FOR MORE AND STIFFER LAWS. AFTER ALL, WE'VE PROBABLY ALL DONE AT LEAST ONCE. ...THERE BUT FOR THE GRACE OF GOD, GO I.

I'D LIKE TO TALK TO YOU ABOUT THAT NOTION. IT'S ONE THAT I SHARED FOR A LONG TIME. I WOULD LIKE TO PROPOSE THAT IF YOU ENACT THIS BILL AND OTHERS LIKE IT, YOU WILL NOT ONLY BE SERVING OUR COMMUNITIES, YOU WILL ALSO SERVE THE OFFENDER. I AM AN ALCOHOLIC AND WAS A PROBLEM DRINKER FOR FIFTEEN YEARS. DURING THAT TIME I DROVE AND DRANK. AFTER LONG NIGHTS AT EITHER PARTIES OR THE BARS. EVEN ON TRIPS ACROSS THE STATE. THERE, BUT FOR THE GRACE OF GOD...NO, I DIDN'T HAVE AN ACCIDENT WHILE DRIVING THAT HURT ANYONE. BUT I DID PARK ON MY SIDEWALK. RAN INTO FENCES. LEFT MY ENGINE RUNNING WHILE I SLEPT IN THE CAR. AND EVEN JOKED ABOUT IT. I WOULD OFTEN RECANT ABOUT HOW "OLE BETSY" KNEW THE WAY HOME. ALL I HAD TO DO WAS PUT THE KEY IN, START HER UP, AND SHE DID THE REST. THEN WE'D ALL CHUCKLE.

THREE YEARS AGO, I GOT LUCKY. I COMMITTED ANOTHER KIND OF STUPID DRUNK TRICK, BROKE THE LAW AND HAD THE CONSEQUENCES ENFORCED. FOR THE FIRST TIME, SOCIETY DIDN'T ENABLE ME TO CONTINUE MY FORM OF SOCIAL BEHAVIOR. INSTEAD, THEY SAID "CLEAN UP OR GO AWAY." THERE WERE NO EARS TO HEAR MY LAME EXCUSES OR PLEAS FOR MORE TIME. WELL, I WENT AWAY AND CLEANED UP. I GOT THE HELP I NEEDED.

TODAY, I START ANOTHER CHAPTER IN MY FOURTH YEAR OF RECOVERY. AND MY LIFE IS FULL. I HAVE A LOVELY FAMILY AND A BRAND NEW GRANDDAUGHTER. I LIVE IN A GREAT COMMUNITY AND STATE AND I CONTRIBUTE. I REDISCOVERED THAT THE WEEK HAS SEVEN DAYS AND I ENJOY THEM ALL. AND IN EACH OF THEM, I AM IN CONTROL OF EVERYTHING THAT I DO OR USE.

ON BEHALF OF ALL OF MY BROTHERS AND SISTERS WHO ARE NOT IN CONTROL, PLEASE DO NOT ENABLE THEM ANY LONGER. SAVE THEIR LIVES AND YOURS. PLEASE MAKE THE CONSEQUENCES MEANINGFUL FOR RECOVERY FOR THEM ALSO.

THANK YOU.

DATE 2-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB237 SB316 SB 333 SB350

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
CLARENCE BRAZIL		SB237	X	
CLARENCE BRAZIL		SB316	X	
Albert Fake	High. Traffic Safety	SB 333, 237, 316	X	
Diane Stanley	yellow DUI Task Force	237 316 333	✓	
Jerry Archer	Billings Police DUI Task Force	237 316 333	✓	
Harold Hanser	Hat DUI Task force	237, 316 333	✓	
JOE ROBERTS	DUI Prevention Committee	237, 316, 333	✓	
John & Jill Campbell	self	237 316 333	✓	
Peggy S Wheeler	Self	237 316 333	✓	
Craig Reap	MHP	11	✓	
Mark Cady	Billings Police DUI TASK FORCE	237, 316 333	✓	
Nancy K. Jovin	Ravalli County DUI Task Force	237, 316 333	✓	
DARRYL BRUCE	DCHS/HDHD Sect	237, 316 333	✓	
GEORGE BONINI	MTEA	237	✓	
WM. J. WARE, Chief of Police	Mt Assn. of Chiefs of Police	237, 316, 333	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 237 SB316 SB 333 SB350

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
STEVE E. RANDOLPH	ZAPATA'S BEST		X	
Bob Campbell	Self	237		X
Kathy McGowan	CDPM, MSPOA	316		
Kathy McGowan	" "	333		
Mike Runyan	Boyd Andrew CDCL	333	X	
Troy McGee	Mont Police Protective Assoc	237 316 333	✓	
Francie McGee	Gallatin Co. DUI	237 316 333	X	
Dennis Paxinos	Yellowstone Co Atty	DUI Bills	X	
Tom Huddleston	City of Helena	DUI	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
	2/20	3/03		CONCUR 3/13 VOTE: 16-2		3/15
SB0218	CHRISTIAENS, CHRIS		REVISE LANDLORD TENANT LAWS			
	2/15	3/02		CONCUR 3/15 VOTE: 17-2		3/16
SB0229	HARGROVE, DON		CRIMINAL FORFEITURE OF PROPERTY FOR DRUG OFFENSE; OFFENSE TO POSSESS			
	2/02	3/06		CONCUR AS AMENDED 3/14 VOTE: 18-1		3/15
SB0237	BISHOP, AL		STATE OPEN CONTAINER LAW			
	2/20	3/14		TIE VOTE 3/22 VOTE: 9-9		
SB0272	GROSFIELD, LORENTS		REVISE FILING REQUIREMENTS OF SURVIVING SPOUSE OF JOINT TENANCY			
	2/06	3/08		CONCUR 3/15 VOTE: 19-0		3/16
SB0278	BROOKE, VIVIAN		REVISE DOMESTIC VIOLENCE LAWS			
	2/15	3/07		CONCUR 3/9 VOTE: 18-0		3/13
SB0286	FRANKLIN, EVE		COURT-ORDERED COSTS AND COUNSEL FEES IN PATERNITY PROCEEDINGS			
	2/15	3/03		CONCUR 3/9 VOTE: 18-0		3/10
SB0292	BROWN, BOB		WOMAN'S RIGHT TO KNOW CONCERNING ABORTION			
	2/20	3/20		CONCUR 3/22 VOTE: 12-7		3/22
SB0297	DOHERTY, STEVE		MANDATORY INSURANCE VIOLATIONS PENALTIES			
	2/15	3/08		CONCUR 3/15 VOTE: 17-2		3/16
SB0316	BISHOP, AL		PROVIDE DUI SENTENCING ENHANCEMENT FOR DUI			
	2/20	3/14		CONCUR AS AMENDED 3/22 VOTE: 18-0		3/23
SB0333	BISHOP, AL		REVISE PROBATIONARY DRIVER'S LICENSE PROCEDURES UNDER DUI LAWS			
	2/20	3/14		CONCUR AS AMENDED 3/22 VOTE: 18-0		3/23
SB0340	CRIPPEN, BRUCE		AUTHORIZE LIMITED LIABILITY PARTNERSHIPS			
	2/22	3/06		CONCUR AS AMENDED 3/14 VOTE: 19-0		3/15
SB0353	HALLIGAN, MIKE		REVISE GUARDIAN AD LITEM IN FAMILY MATTERS/SPECIAL MASTERS IN CRIMINAL CASES			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 14, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 327, SB 316, SB 333	
Executive Action:	SB 63	BE CONCURRED IN
	SB 109	BE CONCURRED IN
	SB 229	BE CONCURRED IN AS AMENDED
	SB 340	BE CONCURRED IN AS AMENDED

{Tape: 1; Side: A}

HEARING ON SB's 237, 316, 333

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, introduced SB's 237, 316, and 333 as a result of a State DUI Task Force appointed by the Governor and the Attorney General. Montana is known as a "hard-drinking" state and he said that it currently ranks second or third in the United States in alcohol consumption. SB 237, commonly known as the open container bill, would make unlawful the drinking, possession or storage of open containers of alcoholic beverages in motor vehicles. It would provide that open containers could be in motor vehicles if they were not in the passenger area and other exceptions included for-hire vehicles, recreational vehicles and campers. The jurisdiction would encompass areas outside incorporated city limits.

SB 316, he said, would be covered by proponents' testimonies.

SB 333 would provide for a first-time DUI offender to receive chemical dependency treatment after being evaluated by a counselor.

Proponents' Testimony:

Attorney General Joe Mazurek appeared as a proponent of the three bills. He related statistics involving traffic accidents and the percentages of alcohol-related accidents as evidence of the need for these bills. He summarized the package of legislation as having an impact on teenagers who experiment with alcohol, on social drinkers and a significant affect on repeat offenders. He said the percentage of multiple DUI offenders has increased from 23% - 30% over the last several years. The percentage of second-time offenders has gone from 19% - 23% and the percentage of third-time or more offenders has gone from 4% - 8%.

Joe Roberts, DUI Task Force, spoke on behalf of the Governor's office to say that the bills had been reviewed and were supported by him.

Mike Schultz presented written testimony as a father of a victim of a DUI offender. **EXHIBIT 1**

{Tape: 1; Side: A; Approx. Counter: 23.8}

Harold Hanser, DUI Task Force Chairman, spoke in support of these bills. He said drinking and driving can no longer be considered a social indiscretion and it is the most serious crime in Montana from the standpoint of impact on lives. In all other states the statistics regarding DUI deaths have gone down. In Montana, they have stayed the same. He said the question in the open container

law was one of maturity. He said the open container law would be a message as much as anything else to the youth. He urged the committee to accept the DUI legislation package in an effort to save lives and affect the economic impact of drinking and driving.

Tom Huddleston, City of Helena, spoke in favor of the three bills. He proposed that enacting these bills would be serving the community as well as the offenders. He testified about his personal problem with drinking and how having been arrested and having had the law enforced had changed his life.

Mike McGrath, Lewis and Clark County Attorney, Montana County Attorneys Association, addressed SB 316 in particular. He said this provision would make the fourth DUI offense a felony and would address the problem with repeat offenders by giving more options in prosecution.

Ellycia Taapken, DUI Task Force, supported passage of all three of the bills. She said that these bills were not as strong as statutes in some other states, but that these were steps in the right direction. She referred to national statistics regarding DUI offenses.

Peter Funk, DUI Task Force, said he had worked with motor vehicle laws in the state when he was with the Department of Justice and had drafted the language of the bills. He "walked" the committee through each of the bills.

He said that SB 237 was patterned after the Washington State statute and that it was fairly straightforward. He pointed out the distinction which had been drawn between moving and nonmoving vehicles in the changes made in the Senate. The prohibitions on moving vehicles were made broader than those for not in motion.

SB 316 would provide for numerous changes in how the law would treat drinking and driving offenders. Under current law, law enforcement officers have no ability to obtain blood alcohol information until after the arrest. This section would authorize a pre-arrest test for the purpose of determining whether there is probable cause to continue with that type of investigation. He said it was designed to mirror the implied consent scheme and various sanctions. A safeguard is that officers are not authorized to implement the scheme until both the officers and the devices are certified by the department.

Section 2 of the bill would create a new offense which would deal with a person under the age of 21 driving with a blood alcohol concentration of .02 or more. Section 3 of the bill addressed the forfeiture of vehicles and transfer of licenses in DUI charges. Section 4 would outlaw deferred prosecutions of DUI offenses. Section 5 dealt with suspended or revoked licenses and Section 6 amended the existing implied consent scheme, Section 8 would change the DUI sentencing statute and was considered the

heart of the bill as it defined the sentencing as a felony on the fourth offense, it dealt with how gaps in convictions are added up in the state for sentencing purposes and dealt with deferred sentencing. Section 9 made the same three changes in the blood alcohol content to mirror the DUI statute as in Section 8.

SB 333 dealt with the treatment aspect of DUI offenders and would make it discretionary with the judge for first-time offenders. It would require certified chemical dependency counselors to use a recognized set of standards in evaluation of DUI offenders. It would also change the handling of multiple offenders. The court would have the discretion in choosing the recommendation for a counselor.

Jill Campbell provided written testimony in support of the bills. **EXHIBIT 2**

{Tape: 1; Side: B; Approximate Counter: 5.1.}

Colonel Craig Reap, Montana Highway Patrol, stood in support of the bills. He discussed the frustrations faced by law enforcement officers in dealing with drunk drivers and how he believed these proposed statutes would alleviate some of the problems.

Mike Rupert, Boyd Andrew Chemical Dependency Care Center, supported all three bills, but specifically addressed SB 333.

Norma Jean Boles, Department of Corrections and Human Services (DCHS), appeared in support of HB 333 which would encourage treatment. She said that 40% of the population of first time offenders is chemically dependent and in need of treatment. Currently they are not required to have treatment and this bill would require it, therefore they were in favor of it.

Nancy Jovin, Ravalli County DUI Task Force Coordinator, presented written testimony in support of the bills. She shared her testimony as a victim of a DUI accident where her husband was killed on their wedding day and she was injured. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 17.1}

George Bonini, Montana Traffic Education Association, expressed support for the passage of the three bills.

Peggy Wheeler gave testimony of her experience with a DUI offender in the loss of her daughter. **EXHIBIT 4**

Mark Cady, Billings Police Officer, spoke on behalf of his experience as a police officer as well as having been a multiple victim of the DUI offense. He said this package of bills was important in positively affecting Montana.

Mike Bloom, Assistant Helena Police Chief supported the bills. **EXHIBIT 5**

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 6 is a letter in support of SB's 316 and 333.

EXHIBIT 7 is amendments submitted to DUI-related HB 256 which was presented for the committee's consideration.

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Counter: 24.5.}

REP. DUANE GRIMES asked the sponsor if he would be supportive of changing the bill to coordinate it with other legislation. This would give it the most strength by striking subsection 4 which made it a fourth offense felony and which would automatically make it a third offense felony if the other bill which addressed this issue passed. The sponsor agreed.

REP. DEB KOTTEL asked if money which funds chemical dependency treatment programs comes out of taxes on the sale of liquor.

SEN. BISHOP did not believe that was the case, but that each treatment center in each county is paid for by the offenders.

Albert Goke, Montana Traffic Safety, said there are numerous ways the costs of treatment are paid. There is a tax on liquor which supports treatment centers for those who are unable to pay. The system which seems to work includes the offender paying for the costs of their alcohol information course as a first offender.

REP. KOTTEL asked what happens when the offender cannot afford to pay.

Mr. Goke was unaware of an instance where someone lacking the ability to pay did not receive treatment.

Mr. Rupert said they attempt to collect payment for court school regardless, but charges for treatment are based on the ability to pay. If someone is unable to pay for any part of it, they still receive treatment.

REP. KOTTEL said section 3 of SB 316 seemed to be an alienation of the sale of property whether or not it was transferred to a bona fide purchaser. She was concerned about the legitimate need to sell the car in order to support the family of the convicted DUI offender, for treatment of the offender or for transferring ownership to that lending institution or to a buyer who would

assume payments. She felt it was written so broadly as to prohibit legitimate transfers in an attempt to stop fraudulent transfers.

Mr. Funk said she was reading the bill accurately and that it was drafted in this manner primarily in order to make the harshest type of statement which could be made in regard to those types of transfers. He said it would not be a significant task to build in some exceptions for bona fide purchasers.

REP. DANIEL MC GEE asked if treatment should be characterized as a cure.

Mr. Rupert said that people who succeed are not cured. They believe the best they can do is arrest the problem.

REP. MC GEE asked how that would translate into treatment at a potential cost to taxpayers in that if a person did not want treatment, they would not recover.

Mr. Rupert said that was not necessarily the case. In a study comparing those who enter treatment voluntarily versus those who are forced into treatment, it was shown that the recovery rate in the two groups was identical. The treatment can work on people who initially do not believe they have a problem, but to succeed they must believe they have a problem by the end of it.

REP. MC GEE and **Mr. Rupert** discussed the length and content of the programs available. And the question was what the state's role should be in treatment for stopping DUI repeat offenses. **REP. MC GEE** wondered if incarceration as a deterrent was a better solution but questioned having the state mandate treatment and asked if he felt that was a viable solution.

Mr. Rupert believed it was because there were two groups of people--those who were chemically dependent and those who commit the offense. The ones who are not chemically dependent benefit from jail time as a deterrent. But he said there is a percentage who can be reached by treatment so they are no longer a threat to society on the road.

REP. MC GEE quoted, "Treatment is discovery and long-term things are recovery." He asked how the state could extend the treatment concept over the long term so that they would not re-offend.

Mr. Rupert said that they could adopt a system for multiple offenders where they would be under the supervision of a treatment program and after care with a monitoring phase up to one full year. This suggestion was modeled after the amendment in **EXHIBIT 7** referenced above.

REP. MC GEE asked the sponsor if he would agree to this amendment and he said he would not commit to it until he had a chance to review it.

{Tape: 1; Side: B; Approx. Counter: 43.3}

REP. GRIMES asked the chairman of the task force for information regarding the findings on deferral of sentences. He wanted to know in what cases they had found that it was a frequent occurrence that sentences are being deferred and how frequently that was happening.

Mr. Hanser said the concerns before the task force were that when sentencing was deferred on the DUI it caused the record to be lost as well as the impact of trying to enforce the law. They found it was frequent enough that the task force had to take some action.

REP. GRIMES asked if the legislature were to take the actions which were proposed in the bill and on the previous legislation which had passed, what role the open container bill would play in it and whether it was more of a social corrective measure or if it was a deterrent.

Mr. Hanser believed a person's first inclination was to follow the law and that it would be preventive from that standpoint. The open container law was a message important for youth. He felt it was a conflicting message to have a law against drinking under the age of 21 while not having an open container law. He said it was a contradiction to say people can drive while drinking while being opposed to drinking drivers.

REP. GRIMES redirected his first question.

Mr. McGrath expanded on the explanation regarding deferred sentencing. Between 1983 and 1991 a DUI sentence could not be deferred. In Lewis and Clark County they cannot be deferred currently. He said the reason is that it establishes a record. A deferred sentence in the traffic area precludes the state maintaining those records. In 1991 there was an inadvertent change made in a general sentencing bill. He did not think it would have a huge impact to pass that portion of this bill because in his county as well as most of the other counties of the state, sentences are not deferred.

There was a negative response from other witnesses in the audience and **REP. GRIMES** requested testimony from other witnesses on this subject.

Mr. Schultz said he had reviewed the court system in his area (Choteau County) for 1993 and 1994 and discovered that out of 67 cases, 87% were deferred or pled-off.

REP. DEBBIE SHEA spoke to SB 333 as a very positive piece of legislation and asked what specific exposure to rehabilitation was given to a repeat offender who was discussed in testimony.

Mr. McGrath shared which rehabilitation programs were included in that particular person's case. He added that the most significant problem which law enforcement faces is the repeat offender. Many do recognize their need for treatment and accept it, but there are some who continue to drink and drive despite all efforts to the contrary including rehabilitation programs and punishment. His experience has been that without the persuasion toward treatment, they will continue to drink.

REP. SHEA asked if there is a stipulation that they must successfully complete the program.

Mr. McGrath said it depended on the court. Some require successful completion of a chemical dependence evaluation and they are ordered to follow the recommendation, and if found chemically dependent, to go into a successful completion of a treatment program. The problem is in the definition of success as well as the time frame for success.

REP. JOAN HURDLE asked if there were statistics on how well treatment works.

Mr. Rupert said they had statistics on those who had done all that was asked of them, which they call successful completion of treatment, and statewide the average was about 60%.

REP. KOTTEL asked if there would ever be justice across counties when some law enforcement personnel who themselves are chemically dependent and when judges and lawyers are themselves chemically dependent and this affects how they sentence others. She asked what the task force did in the way of bringing some light on those issues as well as uniformity in sentencing.

Mr. Rupert replied that there are loopholes exploited by judges and law enforcement officers, but they could try to close those loopholes. The portion in SB 333 which dealt with everyone using the same standards and rules was in response to that. Treatment is more than the service they provide and whether or not treatment works is dependent upon whether the courts are willing to enforce a penalty if it doesn't and it also depends somewhat on employers in some instances as well as families.

REP. MC GEE said that in Yellowstone County certain justices of the peace sentence people to AA and that the people in AA struggle with that since they are not a governmental agency. He asked if that kind of practice would expand.

Mr. Rupert said that it was a problem for people being sentenced to those types of programs. In sentencing to AA and other private programs there was a problem with monitoring compliance to the sentencing.

REP. MC GEE asked **Mr. Funk** to respond to the information about people being sentenced to AA.

Mr. Funk said he was not aware of that practice.

REP. MC GEE asked if he saw that SB 333 would expand the potential practice of sentencing persons to AA.

Mr. Funk did not think SB 333 would. In the criminal procedure code which has generic statutes dealing with sentencing and a judge's general policy concerning sentencing, there is language which would allow a judge the freedom to impose sentencing to related programs. He said there was nothing in SB 333 as drafted or as contemplated that was intended to have any interaction with an AA-type program.

{Tape: 2; Side: A}

Mr. McGrath expanded on the answer by saying that the district court has broader sentencing authority than a justice or city court. The provision in the bill that would allow for a fourth offense to be treated as a felony was designed to give a judge broader authority in terms of sentencing and also broader authority in terms of monitoring.

REP. MC GEE stated that AA is an all-volunteer program and asked how the court would have the discretion to sentence someone to a nongovernmental entity.

Mr. McGrath said the sentence does not apply to the AA program, but it applies to the defendant and if the court determines that it is appropriate for the particular defendant to be required to attend AA, AA has open doors and welcomes all comers.

REP. HURDLE asked for an explanation of a .02 blood level.

Mr. McGrath said that provision stated that it is a zero-tolerance provision for minors.

REP. HURDLE requested information about the 60% success rate.

Mr. Rupert said that people are included who had done everything they had been asked to do and there is a six-month follow up and then follow up in one-year and two-year increments. He said that the follow ups are done over the telephone and therefore are not done as well as they could be. It depends upon people telling the truth. The organization he represents plans to hire an outside organization to do their follow ups which would include methods of verification of success. He said they believe that about one half of the people who get into treatment will make it.

REP. KOTTEL asked if .02 could be registered with alcohol-based mouth wash or cough medicine.

Mr. Rupert said he did not know the answer to that.

Mr. Goke answered that there were five states in the nation with what is called zero-tolerance with their laws written at zero. He said that all five states were not having problems with the testing at zero. Most of the youth being tested are never near zero. The valid concern is that mouth wash and some other items can test when they are dealing at zero-tolerance level and the task force chose .02 because they have confidence that the machine they currently have would be accurate enough to measure true consumption.

REP. KOTTEL asked if there was any consideration in the Senate to take her trial de novo bill off the table because of how it would relate to the anticipated increase in DUI sentencing.

SEN. BISHOP said he could only respond for himself and that it would not change his vote.

{Tape: 2; Side: A; Approx. Counter: 10.2}

Closing by Sponsor:

SEN. BISHOP believed this was a big first step for the state in developing an approach to life and death situations. He particularly pointed to the open container bill as being important in sending a positive message to the people of Montana.

EXECUTIVE ACTION ON SB 229

Motion: **REP. LOREN SOFT MOVED SB 229 BE CONCURRED IN.**

Motion/Vote: **REP. KOTTEL MOVED TO AMEND SB 229 BY STRIKING "KNOWINGLY" ON PAGE 1, LINE 13 AND TO INSERT "WHEN THE PERSON KNOWS" FOLLOWING "KNOWS" AND FOLLOWING "THAT" TO INSERT "IT" ON LINE 14. The motion carried unanimously.**

Motion/Vote: **REP. SHIELL ANDERSON MOVED SB 229 BE CONCURRED IN AS AMENDED.**

Discussion: **REP. HURDLE** requested an explanation of page 2, lines 14 through 16 in response to her concern that a spouse would be forced to sell their property if the portion of it which belonged to the offender was subject to seizure.

CHAIRMAN CLARK said this bill dealt with seizure of property upon conviction. **REP. KOTTEL** discussed ways the concern could be addressed.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ 10:20	~~✓~~	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1
DATE 3/14/95
SB 237, 316, 333

Statement to the Judicial Committee, 1995 Legislature

Thank you Mr. Chairman and committee members for allowing me time to address this committee on a very important issue that effects all or our lives in one way or another. I'm going to be blunt right at the start because I feel there is no other way to express my point. Notice the front of my T-Shirt and this blank ghosted out spot. This is where my son used to be in our family picture. He graduated from Fort Benton High School on May 22 1994 he was to enter the United States Army on July 6 1994. Our son was very involved in school including Student Council, Band, Chorus, B club, Key Club, Basketball, Track, Football and loved the outdoors especially fly fishing in Montana. He was a true lover of Montana, and what it had to offer. He was to be the fifth Generation Farmer of our family farm and destined to be a citizen of Montana. But a man on June 30th 1994 made a choice and I want to emphasize the word CHOICE to get into a vehicle while legally drunk and proceed down the highway with No Drivers License, No insurance, expired plates on the vehicle with impaired vision to the point that he lost his job and crossed the yellow line to slam directly into the side of my sons pickup causing it to spin with such force that it broke his neck and caused enough head injuries to kill him. Now my wife and I and my sole remaining child, my daughter Lacey stand here and say is the Law strong enough?? Is the judicial system serving the public and enforcing the laws that we have at this time to ensure yours and my safety when we travel our highways?

The man who murdered my son died two days later from burns sustained basically because he was to drunk to get himself to safety. This mans past driving and criminal history starts at age 18 and progresses over 18 more years. I would like to tell you at this time a brief run down of his record. This is as much as we can piece together from our findings. Now I hope you realize that these people who are habitual offenders are in my opinion coddled as we found out when trying to attain records of this person who killed my son. In Canada he compiled a record over a 18 year period of 30 computer pages long, was arrested on approximately 30 different occasions for high speed driving and DUI offenses sometimes was in high speed chase situations and most of the cases had drug and drug paraphernalia implications. He served time in Canada for a crime in 1991 and 1992. Now I do not have specifics on any of these cases as I as the common citizen do not have the right to viewing them other than the five year driving history in the U.S.. He had approximately 100 alias names as we can acertain. As if that was not enough for Canada to lock him up he also compiled a 18 year history in the United States. From going through our local Justice of the Peace files we found only one file which was a theft,DUI charge,but his 5 year history shows another theft in our county for which there is no file. After talking to

other people in different communities and other states we also found 1 dangerous Drug charge,at least two probation violations, five theft charges, two false report charges, three criminal contempt charges, and two contempt of court charges. All that said do you think this man deserved to be out in society at any capacity? Well he was and he took my son's life one month later from his last arrest in Havre on May 29th for Contempt of Court. There's plenty more offenders out on our roads to take you or one of your family members lives at any time if we continue to treat DUI's and habitual offenders with such ease and candor. So take a look at your last family picture album and choose which one you want to eliminate from your own life so as to rid these people of driving our highways. Believe me it can happen just as the front of my t-shirt depicts. That's reality!! It's a reality my family faces every morning, and will continue to face for the rest of our lives.

In Loving Memory Of:

Aaron Michael Schultz

Tuesday April 22, 1975 - Thursday, June 30, 1994

FOOTPRINTS

One night a man had a dream. He dreamed he was walking along the beach with the Lord. Across the sky flashed scenes from his life. For each scene, he noticed two sets of footprints in the sand, one belonging to him, and the other to the Lord.

When the last scene of his life flashed before him, he looked back at the footprints in the sand. He noticed that many times along the path of his life there was only one set of footprints. He also noticed that it happened at the very lowest and saddest times in his life.

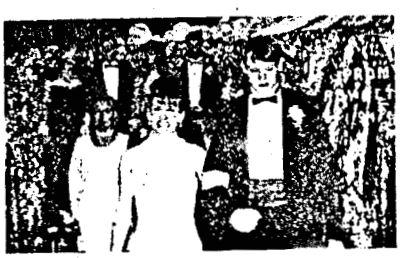
This really bothered him, and he questioned the Lord about it. "Lord, you said that once I decided to follow you, you'd walk with me all the way; but I have noticed that during the most troubled times in my life, there is only one set of footprints. I don't understand why you would leave me when I needed you the most."

The Lord replied, "My precious child, I love you and I would never leave you. During your times of trial and suffering, when you see only one set of footprints, it was then that I carried you."

Aaron was everyone's "little buddy." No matter what he was up to, he always had that sparkle in his eye. Aaron has touched each one of our lives and will always be a part of us. Just remember....

Aaron, we love you.

Do not stand at my grave and weep.
I am not there, I do not sleep.
Do not stand by my grave and mourn.
I am not there, I have been born.
I am a thousand winds that blow.
I am the diamond glint on snow.
I am the sunlight on ripened grain.
I am the gentle autumn rain.
When you wake in the morning hush.
I am the swift uplifting rush,
Of quiet birds in circling flight;
I am the soft star light at night
Do not stand at my grave and weep.
I am not there, I do not sleep.
-An Anonymous Indian Prayer



With that statistical scenario in mind I would bring your attention to some clippings I have been keeping just in the last six months out of our local newspaper and some magazines that show the same problems nation wide. On this poster is a small portion of the DUI problem as perceived by a handful of writers and citizens expressing their anger and frustrations to the Judiciary System as it stands. I'm not going to go in to all of them, I'm sure your aware of the public outcry for Justice. I am constantly bombarded by angered people who are fed up with the status Quo of the Judiciary System. To emphasize my point I have here in this box letters of support we have compiled from angry voters through out the state the letter reads as follows: (read letter). We had no trouble getting people to sign these letters and in our own Chouteau County we have collected 250 letters of support at this time with more coming in,state wide we have 655 letters from five counties. And this was done by a handful of people. I know we reached only a sampling of Montana citizens with the same concerns. We have letters from students not yet voters but future voters with the same concerns. The Law Enforcement people are doing a very commendable job and we have their letters of support in this box also.I hope some of you have been out with or talked to some of these Law enforcement officers to see what they deal with on a every day basis with these habitual offenders and ask yourself how you would feel to see these people get off with a Deferred sentence or a plea bargain? A perfect story told to me by a Law Enforcement Officer just a couple months ago illustrates my point. He stopped two individuals one night heading toward Great Falls in Chouteau County he ran a check on them and found out they were both felons with prior felony charges, one of them had served ten years for manslaughter, in the car was drugs on the seat and a envelope of money,he arrested them and took them in to the County Attorney who gave them a plea bargain which lowered all charges to a misdemeanor and let them pay their fines out of the money that they had in the car on the seat. As the disgusted officer was leaving the Attorneys Office one of the men said: You were lucky, we were waiting for you to make a mistake and we were going to take you out. Now put yourself in that scenario and tell me how would you keep your moral up and how frustrated would you get about your job? pause This is one incident but the ramifications of what could of happened is plain disgusting. What we are here to ask all of you is Where is the justice?? When killing an elk out of season has a stiffer penalty than taking a car which is no different than a loaded gun and pointing it at a innocent person and taking their life. We have as a society who through negligent laws has totally turned priorities backward of what they should be. Montana is noticeably behind the rest of the nation on how it handles DUI

Drug and Criminal offenses. These people who signed our letters are telling you something and you better react. The last election in this state and this nation wasn't about Democrats or Republicans it was about being fed up with government in general and how it is not listening to the people and if you don't get in touch with what they are saying to you next election will be another learning experience for you that you may not like. Believe me when I tell you that a large percentage of the people in this state and Country are saying enough is enough. I strongly urge you to support any and all legislation that will help to stop the atrocities that are being allowed at this time in our state. Please help us and I mean us as letter signers and citizens of Montana to stop this feel good system and install some fear in people who chose to disobey the law and hopefully from your actions maybe some family out there on the roads or on the streets won't have to experience what our family has gone through do to the neglect of the system. As my wife Lorri says My son did in one moment what two countries failed to do in 18 years, and that's to take one habitual offending drunk off the roads of Montana. Not by choice he laid his life down to make safer roads for Montanans. So I stand here today to try to get people to face a reality I face every day not by choice but by the choice of a drunk driver who over and over again laughed at our Judicial System and used it to his advantage. Is it not time to stand up and be accountable as Representatives of your constituents and of the State of Montana and make the system work again for the people whom you owe allegiance to by their vote of confidence in you? Please do your duty and support efforts to correct these laws for the safety of all our loved ones. Don't let another family go through what we have gone through, no one should have to face what we face every day. By making it a felony to drive and drink it will go along ways toward putting fear back into these habitual offenders of DUI laws. In the future I would hope the Judicial system also would close the loop holes in the law that makes Deferred Imposition of sentence and Plea Bargaining the mainstay of our court systems today. Common sense dictates that if you disobey a law you should have to pay the consequences. I believe that if some fear is established in the law that we can save some people from living the life my family is now living. And please don't put a dollar value on human life by trying to ascertain a way out by saying there's not enough prison space. When you get some fear into the people towards the law we will save money and above all we will save families and communities a lot of grief. That's why my family and I and all these friends of ours are here, we want to make a difference for all Montanans. Thank You for your time and consideration.

EXHIBIT 2
DATE 3/14/85
SB 316, 333, 237

My name is Jill Campbell. I am here to give my support to House Bills 237-316-333. I feel if our drunk driving laws were different, I would not have to be here right now.

Because of a drunk driver my hole family lives have been turned upside down. Last Aug. on her way home from a rodeo in Kalispell my 16 year old daughter and her good friend Anita were killed by a drunk driver. Dr. Miller passed on a double double yellow line and hit our truck head on. Anita was killed instantly, Jana was unconscious and life flighted back into Kalispell. Unless you are a parent and received one of those midnight phone calls, you will never know the fear that grips your heart. I keep thinking, this is not happening to us. We are supposed to leave on vacation in the morning. Instead we are heading to the hospital in Kalispell. I can still see all those flashing lights ahead. I do not want to drive by the accident scene, but we had too. I did not look but I can still hear my 14 year old son saying NO WAY. When we got to the hospital and the doctor finally came in to tell us what was happening, he said she was still unconscious. The CAT scan showed on internal injuries, no broken bones but... she had sustained major head trauma. She was bleeding inside her brain and there is nothing you can do for that except pray it will stop and the swelling will go down. He told us we could go in and see her in a minute. It took all my strength just to walk in that emergency room.
I can not begin to tell you how hard it was to see her hooked up to all those machines. I just wanted to take her into my arms, but I could not. I did manage to tell her how much I loved her and that she was strong and could fight this. The next 2 days were a living hell. My hole family was there to give there love and support. We all took turns sitting by her side, talking to her and praying for her. I would sit there and hope she could here me tell her how much I loved her and needed her to wake up. Even after the doctor came in and told us it would take a miracle to pull her through, I still would not gibe up hope. It all seemed like a bad dream and I just wanted to wake up.
Then the hospital Chaplain came in and told me I needed to let her go. That I had to tell her it was ok. If she was to go in peace she needed to here me tell her that I would be ok with out her. I told him I could not say that. I was not ready to give up. They say miracles happen every day. I wanted one. Finally I did tell her, but I added that if it was not her time she did not have to go. We still had concerts and rodeos to go too.
she died the next afternoon.

I made a promise to myself that I would try to get our drunk driving laws changed. The DUI Task Force has made a good start.

On House Bill 333, I believe treatment in the early stages can be a very important part in controlling this crime. In DR. MIllers case he realized treatment was important only after killing 2 innocent people.
I think not giving a person a probationary license, until they complete a treatment program is a very good idea. We

easy for a person to drive again so soon after there ticket. They just broke the law and do not deserve to drive again so soon. We need to make it a lot harder on drunk drivers. Let them have to walk to work or ride a bike for a while, maybe they will think twice before they drink and drive again.

House Bill 316. In 1984, if officers were to have used a hand held testing device, Dr. Miller might not have gotten his DUI reduced to a reckless driving ticket. Plus in 1988 and 1991 his careless driving tickets could have been DUI'S. Even the Judge said so last week when he was finally sentenced. If he would have been previously tested he might not have been driving drunk that night on our roads. We need to remember that passage of this bill will not mean a financial burden for the people of Montana. The device can be used at the discretion of each Police Department. My husband and I have already found funding for 3 of these devices if the bill is passed. I think you would be amazed at how many civic organizations would support a idea like this. Not to mention the State DUI Task Force or local Task Forces.

Making the third or forth DUI a felony is long over due. Every week in Lake County alone paper you read time after time about repeat offenders. The use of a hand held testing device could have convicted Dr. Miller and made him have 3 DUI'S. Then my daughter and her friends death would have been a felony and he would not be getting out of prison in as little a 15 months.

House Bill 237 that deals with open container. In Dr. Millers own words, he bought a 6 pack of beer and took off for Hamilton. Takeing the back roads to stay away from traffic. The 6 pack he drank while driving was not enough, he had to stop for drinks is Charlo then in Pablo. They found open containers in his truck after the crash. If people can drink legally going down our highways who is there to tell them when they have had enough. How is a police officer going to judge who has had a little to drink and who has had alot. Are there any of us that can not wait until our dentation to have that drink.

In my mind there is nothing you can do today to make things too hard on drunk drivers. For to long we have dealt with this as a social problem. When actually it is a criminal act. Give the Police Officers the tools to do there job.

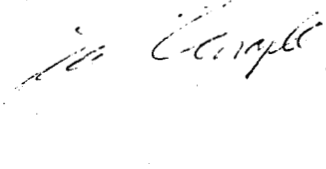


EXHIBIT 8
DATE 3/14/95
SB 237, 316, 333

/111

Nancy K. H Jovin Ravalli County DUI Task Force Coordinator
402 N.2nd
Hamilton MT. 59840

SB 237- Open Container Law 1-13- One way of the State open to the public Motor vehicle in transport.

My feeling on this bill and the ones to follow are long overdue. Montana seems to have "The Good ole Boy"additude. "Well maybe Joe has a drink now and then." Well that's fine for Joe as long as he does not get behind the wheel of a automobile. Drinking and driving should be thought of as a CRIME..not a social problem. Being impaired and driving is a crime. We are losing our neighbors, friends, and families because of this casual additude. Iet's show the people of this state that we care. We care enough to be tough on drinking and driving. That means that it will be treated like the crime that it is, not just someboby's recreational time turned bad. This is a crime and should be treated as such. Joe can wait until he is out of his car to have a cold one. With the exceptions, (i.e. chartered, for-hire vehicles, motorhomes and RV's.) Joe may still enjoy recreation, but not while endangering others.

SB 316 Section 1

I am in agreement with the preliminary testing to help determine 'probable cause" My questions come in Section 1 Subsection 8. that requires the department to certify both the devices and the operators before preliminary tests may be conducted. First, do we have such certified devices and the operators.Before we pass Laws that will require these things maybe we should investgate that. Second how often will devices and officers need to be recertified?Are we putting the horse before the cart? As I have said I am in favor of this as soon as these questions have been answered and adhered to.

SB 36 sec. 2

I am adamantly for this section of this bill.
Youth and alcohol do not mix. That's why it is already a law. They drink, they drive, they injure themselves and others if they are lucky, or they die. They lack experience just driving, let alone add a drink or two. This part of the bill directly relates to SB 237, The open container law. The place where youth drink most frequently is ina car. Both these two bills are a great deterant to our drinking and driving problems.

SB 36 sec. 3

In 993, the legislature provided for the forfeiture of vehicles driven by people who are three-time offenders. When itcomes time to enforce this law the offender mo longer owns a car.This law is a must if we are realisticly going to enforce a law already in place. Subsection 3 Making a transfer in violation of the section a felony offense with hefty fines and jail time should be significant enough to stop this practice.

SB 316 sec. 4

Great.. Iets eliminate the possibility of deferred prosecution. The victums of these offenders have lost their choice, why should

SB 316 Sec. 5

As there is no deterant to not drive while a persons drivers license is suspended or revoked, we have got to get stiffer laws that would stop the problem we have now with multiple offenders. In Ravalli County Jail right now we have three multiple DUI offenders. They don't seem to mind our penalties as they are now. However our law enforcement ,and our judges are reluctant, to say the least, about enforcing this law already. This section also states to "render inoperable" and that will be more easily enforceed. Subsection 5 Joint ownership is also addressed in regard to seizures and is not a bar to such actions,with an "out" for the truly innocent joint owner similar language is already found in the existing forfeiture procedure 61-8 Subsection 7 is again a must. Suspending or deffered penalties are used to give the multiple offender another chance to kill or injure others, costing all of us more then any of us can imagine. Why make a law if it is not going to be enforced?

SB 316 Sec. 6

This is simple to me. Finally something that is really logical. Why would a person not refuse if the penalty is only 90 days compared to 6 months? They can plead not guilty, have their day in Justice Court, then appeal and have another day in District Court. This refusal thing has gotten way out of hand.

SB 316 Sec.7

Consistency is not only important but easy to practice. Let's amend the generic forfeiture provision to be consistant with section 5 and be subject to the same existing procedures.
Sec. 8 Multiple offenders are truly our biggest problem. When it comes to risking lives. Remember driving while empaired is a crime. Let's make the laws show we are serious about this problem, not social but criminal. DUI's are a violent crime. Three strikes and you are out. Subsection 6 Forth time offenders, whether or not it happened 5 years or ten years apart should be a felony offence. Once the offender has shown society that they refuse to take DUI laws seriously they are a dangerous offender, and not safe to society. Subsection 0 Why did 1991 Legislation change or fix something that was not broken? Slow year I guess. No deffered sentences.

SB 316 Sec. 9

There really is no reason why the department should destroy such criminal records. The information is not publicly available but is still to prosecutors and the courts.It is confidential criminal justice information. If a person has a track record that is going to put us all in danger, shouldn't we keep track? Subsection 8 has two conviction that are almost identical. The only difference being,alchol concentration level from testing is generally present in excessive concentration offenses They are identical offenses and should be treated as such.

SB 333 Subsection 4 section 2

Treatment is critical in dealing with DUI offenders. A judge is not certified to make recommendations concernig treatment. In my personal experience drunks are about the best liers and cons around. Only a person trained in chemical dependancy can get the truth. and (maybe) 67

SB333 cont.

Councilors can determine the best recommendations. Also in section 4 if, on the second or subsequent offence two councilors can't agree on treatment, a judge could, after seeing all the evidence, make recommendatio

SB 333 Sec 1& 3

It states that probationary drivers licenses will not be issued until the course of treatment is completed. This only makes sense to me. Why reward an offender and give them back the privilage to drive if they are not willing to complete treatment? What would the incentive be? Why even take away the privilage in the first place?

This bill, in the way that it is written seems to treat excessive alcohol concentration sentencing differently. What do prosecutors know about chemical dependancy that qualifies them to recommand different treatment?In my experience an alcoholic is alcholic and treatment does work in many cases. That is our priary purpose isn't it? To stop drinking and driving in return we have safe highways, and the huge losses that we are experiencing now to decline?

Hi my name is Peggy Wheeler
I lost my only daughter to
a drunk driver on Aug 19, 1994
The driver of the truck that
hit my daughter and her
friend Jana wanted to
know why our children were
in the wrong side of the
road. He was the one on
the wrong side. This man
had 4 Reckless & careless
driving tickets before this.
He was an emergency room
physician of a local hospital.
That worked on DUI victims
everyday so he knew what
drinking & driving would do
to a person. My daughter
died instantly but her

friend lived 2 more days after. On that day I not only lost my only child I lost any future for any part of family the family tree. I don't get to see her go to college or get married. To share her getting pregnant and having my first or any grandchildren. Her father past away in 1982. So this driver also wiped out the only thing precious I had left of that man and marriage. It only exits in pictures and memories.

For the last 6 months I have picked up area papers

EXHIBIT 4
DATE 3/14/95
SB 237, 316, 333

and seen either a picture of my daughter or the doctor. That is really tough on holidays when you going through the motions but really don't have any heart for any of it.

I my self and a recovering acoholic for almost 6 years I thank god everyday for that sobority. And because of my acholism my daughter had made the choose she didn't need to drink. I was very proud of that decision. Please pass these laws so other people don't have to go through this.

EXHIBIT 5
DATE 3/14/95
SB 237, 316, 333

HOUSE OF REPRESENTATIVES

SB 237, SB 316, SB 333 -COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Michael K. Bloom BUDGET

ADDRESS 221 Breckenridge DATE 3/14/95

WHOM DO YOU REPRESENT? Montana Assn. of Chiefs of Police

SUPPORT X OPPOSE AMEND

COMMENTS: It's the right thing to do.

HR:1993
CS16

2-19-95

EXHIBIT 6
DATE 3/14/95
SB 316, 333

Ladies and Gentlemen of the House Judiciary Committee

BEST COPY AVAILABLE

I would like to address the issue of DUI laws that has recently gotten attention in the media.

Before we jump further into issues which in some cases become persecution, let's again consider that in a majority of instances we are dealing with the body in common illness of alcoholism. This disease is recognized by the medical community nationwide as a treatable disease, yet we continue to punish and increase punishment before we increase the utilization of the presently available dependency treatment structures.

Before leaping toward making a felony out of a given offense, how about mandatory treatment at violators expense by not alternate sentencing, which is also currently possible but not utilized to its potential? Five in-patient, out-patient treatments. Why take productive, tax giving people out of the work force and into jail, at the expense of the remaining taxpayers?

Why not increase availability of restricted licenses, with, of course the emphasis still

~~Senator~~

Remember, we're still a land where people can "restrict" 21 and most of us have to travel to Las Vegas.

Incarceration for this or any of the "diseases", has not, cannot and never will be an acceptable alternative to proper treatment. Too often, the symptoms of the ailment are likely quenched while the disease continues unchecked.

I speak of this out of my own experience and observation & many, many others. Please, listen to the voice of Tim and us who see this problem from the inside.

I will continue to be available for any discussion of this, or any other matter, at any time.

Thank you all for your time and consideration.

Sincerely,

George Gallagher

6718 Roberts Rd

Clarks, MT 59824

BEST COPY AVAILABLE

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/14/95

BILL NO. SB 316 SPONSOR(S) Sen. Bishop

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Asst Gooke	Highway Traffic Safety	X	
ELLYCIA TAARKEN PO BOX 77 JEFFERSON CITY	JEFFERSON CO. DUI TASK FORCE	X	
MIKE, LORRI, LACEY SCHULTZ RT, BOX 6, LOMA, MT. 59460	Chotteau County	X	
Nancy Hansford Box 1293 Ft Benton 59442 BOX 506	Chouteau Co Citizens	X	
Pat Henke Ft Benton	Chouteau Co	X	
Craig Reap	MHP	X	
Harold Homan	Gallatin DUI Task Force	X	
JOE ROBERTS	DUI Task Force	X	
Mike Runge	Boyd ANDREW CDCC	X	
Jim Huddleston	City of Helena	X	
GEORGE BONINI	Montana Traffic Ed.	X	
Mary K. Jovin	Ravalli City DUI Task Force	X	
Lenore Langen	DUI Task Force Lake Co	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE

BILL NO. SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRI

NAME AND ADDRESS	REPRESENTING	Support	Oppos
Laura Kaltrik	C.C. of MT	✓	
Charles R. Brooks	Yellowstone County	✓	
Peter Funk	State DUI Task Force	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORI
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
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CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 22, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. Liz Smith

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	NONE
Executive Action:	SB 292 BE CONCURRED IN
	SB 174 BE CONCURRED IN
	SB 61 RECONSIDER ACTION
	SB 61 TABLE
	SB 90 BE CONCURRED IN AS AMENDED
	SB 143 BE CONCURRED IN AS AMENDED
	SB 333 BE CONCURRED IN AS AMENDED
	SB 316 BE CONCURRED IN AS AMENDED

CHAIRMAN CLARK advised the committee that there would be no other scheduled meetings for executive action and they would be on an as-needed basis. He said that if the bill were tabled and **REP. MOLNAR** could accomplish his aim, they could have another executive meeting to handle that.

REP. BOHARSKI did not think they should table the bill but suggested that they postpone action by leaving the bill without final action until amendments could be worked out.

REP. KOTTEL asked the committee to pass the bill and work on the amendments before it was debated on the floor of the House.

REP. MOLNAR suggested that it might be appropriate to have executive action off to the side. He said that if it were to be amended, it would go back to the Senate and explained the ensuing process.

REP. BOHARSKI was concerned about fighting it on the floor. He felt it was possible to make a workable bill out of it and try to work with it out to the side. He suggested holding off on action.

CHAIRMAN CLARK asked **REP. MOLNAR** to withdraw his table motion if they would instead postpone action. **REP. MOLNAR** agreed.

REP. TASH asked how much coordination needed to be done on the three bills related to this subject.

CHAIRMAN CLARK said there was none needed on this bill that this bill did not fit in with the other DUI bills at all. He said the committee would postpone further action on the bill and that **REP. MOLNAR** would get with **SEN. BISHOP** to work out a compromise the committee could deal with. The committee's preference was to limit it to the driver, he believed. After hearing from **REP. MOLNAR** the committee would do a short executive action as had been suggested.

REP. HURDLE asked for an informal poll from the committee to see how many liked the bill as it was written. The **CHAIRMAN** agreed and there were seven who responded by a show of hands.

EXECUTIVE ACTION ON SB 316

Motion: REP. SOFT MOVED SB 316 BE CONCURRED IN.

Discussion: REP. MC GEE said there was to have been a committee made up of three Senators and three Representatives to address this bill and that did not occur. But they had met with **Brenda Nordlund, Joe Roberts** and others informally to combine the DUI bills. He said SB 316 dealt with the penalties for DUI and made the fourth DUI a felony. He said that SB 333 dealt with treatment for DUI. It had been decided to let the House DUI

bills run their course in the Senate and the Senate bills run their course in the House rather than try to merge House and Senate bills. He said a coordination clause had been attached to 256 in the Senate so that if 316 passed, the fourth DUI felony would be dropped and they would adopt the third DUI felony provision of 256. The base bill would be 256 and anything kept in 316 would be merged into the new law, he explained.

REP. BOHARSKI suggested a different way to work with it by eliminating this bill and working with HB 256.

REP. MC GEE said that SB 316 did more than HB 256. He explained the differences.

Mr. MacMaster said the bills were being coordinated in the Senate with **REP. MC GEE** and others but that the Senate had taken the lead in exactly how it would be done after the decisions were made. The technical work would be done between a Senate staffer and **Ms. Nordlund.** How it would be done was already established by them.

There was continued discussion about how to handle it and what the end result would be.

Motion/Vote: REP. ANDERSON MOVED TO AMEND SB 316 ON PAGE 4, LINES 24 - 26 TO STRIKE "AND FORFEITURE OF VEHICLE."

{Tape: 3; Side: A; Approx. Counter: 51.6}

Discussion: REP. ANDERSON explained the amendment to deal with the fact that there were forfeiture statutes in place. He said there are cases where people will pass the field sobriety test, but they wouldn't blow on the breathalizer and therefore their license would be suspended for six months. The bill said that if the person was caught twice for driving while suspended (perhaps to and from work without a permit to do so) the vehicle would be subject to forfeiture as a result of having refused the breathalizer test. In fact, the person might not be legally drunk. If they (sic) revoke a person's automobile for driving while suspended, people would not like it.

REP. TREXLER supported the amendment if for nothing more than the sake of consistency.

CHAIRMAN CLARK said that if a person is asked to give a test, it is up to the officer as to which test to give and it is more than breath, the officer can ask for a blood or urine test instead.

Vote: The motion carried 13 - 4, REPS. BOHARSKI, HURDLE, GRIMES and CLARK voted no.

Motion: REP. ANDERSON MOVED TO AMEND PAGE 2, SUBSECTION 7 ON LINES 13 - 16.

Discussion: **REP. ANDERSON** explained the amendments would deal with the objections of those who felt it was invasive to require subjection to the breathalizer tests. The subsection as written would provide for two violations and on page 5, line 27, the penalty was raised to six months for the first refusal and the second refusal would be another six months within the five-year period. He said this would provide for a one-year suspension for refusal of the test. His amendment would limit it to one test. He said there were people who were not impaired, but simply refused the test and this would be more fair.

CHAIRMAN CLARK said he did not believe that officers in Montana were currently equipped with the portable breathalizers. The section was looking toward the future when this would happen. The other tests apparently did not enter into this section of the bill.

REP. SOFT opposed the amendment. He felt the officer would not be stopping the motorist for no reason, but because there was evidence that the person had been drinking.

REP. HURDLE concurred with **REP. SOFT** and reminded the committee that one-half of the accidents involved drinking.

REP. ANDERSON said it was right that one-half of the accidents do involve drinking, but as far as the suspicion that an officer had to pull a person over, they have station checks after big events and they would not always just see a person driving erratically and in an impaired fashion.

{Tape: 3; Side: B}

He said he read the bill to provide for double jeopardy in that if a preliminary [field] alcohol screening test was refused, there would be a six month suspension and then if the breathalizer test were refused at the police station, they would be suspended an additional six months.

REP. BOHARSKI asked if his amendment would provide for only one suspension. **REP. ANDERSON** affirmed that interpretation of the amendment.

REP. SOFT felt that if the person knew about the law and still refused twice, there was something wrong.

REP. BOHARSKI did not think it was the intent of the bill to "hit" them twice for the same offense.

CHAIRMAN CLARK said it was the intent of the bill. He referred to line 14 on page 2 to spell it out.

REP. GRIMES asked **Ms. Nordlund** to address the section.

Ms. Nordlund, without objection from the committee, said that if she heard correctly that the amendment was designed to merely strike subsection 7--the second sentence, she was not sure that amendment would go so far as the sponsor of the amendment would like to go. The answer to **REP. GRIMES'S** question was, "Yes, the department's intent was that each testing refusal be considered a separate testing refusal, they are separate acts." However, she said to be fair with the committee and **REP. ANDERSON** and if that was what he wanted the committee to vote on, he also needed to examine the second sentence in subsection 5, which she quoted. She said that was the language which created the suspension or revocation that paralleled the implied consent testing refusal in 402. If they merely deleted subsection 7 or the second sentence of 7 and the bureau chief was to come to her with subsection 5 intact, she would tell him that they are each testing refusals and both may result in suspension or revocation.

REP. ANDERSON asked if they should then remove the second sentence of both subsections.

Ms. Nordlund answered that there would never be a penalty for refusal of a portable breathalizer test if those sections were struck.

REP. ANDERSON said his intent was that they could get a suspension for failure to take the field test with the hand-held device, but they could also get a suspension for failure to take the blood alcohol content (BAC). If they took the hand-held test and refused the BAC, that would still be one suspension and that was his intent.

Ms. Nordlund replied that to accomplish this on line 15 following the words, "shall," insert "not."

REP. ANDERSON said many people thought the breathalizer tests were inaccurate.

REP. KOTTEL claimed that defense lawyers advise their clients to not take the test if they are drunk or think they are drunk because it is harder to convict [without the test]. She did not think they refused to take the breathalizer test for moral issues or any other issue, but refused to take it for the reason that they think they are going to fail it. She felt that since they had increased the penalty so drastically for conviction for DUI, they had increased a person's effort not to be convicted. Part of that was to refuse the test. Because she felt they needed both penalties she asked the committee to oppose the amendments.

REP. ANDERSON said the amendment was as proposed by **Ms. Nordlund.**

Vote: The motion failed 6 - 11, REPS. TREXLER, BOHARSKI, ANDERSON, WYATT, MC GEE, and BERGMAN voted aye.

Motion: REP. ANDERSON MOVED TO AMEND LINE 5, PAGE 27 TO CHANGE SIX MONTHS TO 120 DAYS.

Discussion: **REP. ANDERSON** said that in the effort to "hang everybody high" they were going to upset a lot of people since many are convicted of DUI who are not all that impaired. He said if they were going to give them a double "whammy" on the refusal to take the breathalizer test, they shouldn't suspend them for a full year for one offense.

REP. MC GEE asked why he wanted to go to four months.

REP. ANDERSON explained that he thought it was a good compromise.

REP. BOHARSKI remembered testimony about changing it to 90 days but the **CHAIRMAN** did not remember that there was discussion on it.

REP. MC GEE said that subsection 5(a) was referring to the time factor penalty for a refusal to take a test and not a conviction of DUI and he could not remember why it was changed from 90 days to six months.

REP. HURDLE said it was changed because they were increasing the penalties for DUI.

REP. MC GEE said it was not for a DUI but for refusal to take a test.

REP. ANDERSON believed it was increased because they had a task force to address the problem of drunk driving and if it didn't come back with more stiff penalties, they wouldn't have done their job.

REP. HURDLE said she was trying to point out that they were trying to stiffen all the penalties because drinking and driving was too socially acceptable.

REP. GRIMES suggested that for future sessions the committee be given a list of all penalties so that they could see how the adjustment of one would affect and rank with the others. He said he would trust the task force recommendation and vote for the bill as written.

Vote: **The motion failed 5 - 12, REPS. ANDERSON, WYATT, TREXLER, BERGMAN and MC GEE voted aye.**

Discussion: **REP. BOHARSKI** cited a situation where the person tried to do the responsible thing by stopping the vehicle and perhaps going to sleep and yet was charged with a DUI though the vehicle was not in motion. He said he thought that was a problem which needed to be considered.

REP. HURDLE said it sounded as if he was saying that the first decision which was made [to get in the vehicle after drinking and to drive for any distance before stopping] did not count. She

said that when the person got in the car while [or after] drinking, the mistake was still made.

REP. BOHARSKI rebutted that argument.

CHAIRMAN CLARK responded that the first decision was wrong and that this was nothing new. [The criteria of] being in actual physical control of a motor vehicle had been in effect for a long time and some of the people because of their lack of good judgment, do not get clear off the road and some stop right in the middle of the traffic lane and others have been found to be facing the wrong way in the opposite lane and those were not seen driving. The purpose of the statute was that they would still be intoxicated and still in control of the motor vehicle for all legal purposes and he did not believe that they should weaken that. He said that was the reason they had juries and if the person was clear off the road on an approach and charged with a DUI, then it should be taken to a jury.

REP. ANDERSON said that a compelling criteria was that even in the driveway, if the key is in the ignition, the driver is still in control of the vehicle.

Vote: The motion on the bill carried unanimously by voice vote.

Discussion: **REP. MC GEE** asked if a coordinating instruction was needed on this bill.

Ms. Nordlund explained the conflict between section 8 of the bill which amended 61-8-714, MCA, and the same section in HB 256. She said there was coordination language if HB 256 passed with an amendment to 61-8-712, MCA, and the amendment contained a third-offense felony provision, that amendment would supersede the language in SB 316.

EXECUTIVE ACTION ON SB 333

Motion: REP. WYATT MOVED SB 333 BE CONCURRED IN.

Motion: REP. MC GEE MOVED TO AMEND SB 333. EXHIBIT 5

Discussion: **REP. MC GEE** explained the reasons behind the amendments being that he did not think a 30-day treatment was inadequate. The language of the amendment granted a provision for one year of follow-up. It also would provide that the treatment program required would not necessarily be an AA program. He said that amendment 5 took the penalty standards for the per se statute to correspond with what had already been done with the DUI penalty standards.

Ms. Nordlund, without objection from the committee, said she wanted to be very clear that this set of amendments made sure that the treatment provisions contained in the bill applied to

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/22/95

7 AM

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓ 7:55		~~✓~~
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 8:00	~~✓~~	
Rep. Debbie Shea	✓		
Rep. Liz Smith			✓
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/22/95 7 P.

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch		✓	
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea		✓	
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE March 22/95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Joan Hurdle.

Indicate **Bill Number** and your vote **Aye** or **No.** If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
SB 13 ✓	y	
SB 77 Tabled - no way		
SB 133	y	
143	y	no
192	y	
2011237 ✓	y	
4th DWI 316 ✓	y	
Medical 333 ✓	y	no amend. with insurance company

SENATE BILL/AMENDMENT	*AYE*	*NO*

Remainder Tabled - no! way
Bills -

Rep. Dana Wright
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE MARCH 22, 1995

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Bill Carey.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	AYE	NO
429		
SB 237 TABLE?		✓
Postponed action		
SB316 Anderson Amend #1	✓	(4)
" " " #2	(5?)	✓
#3	(5)	✓
SB 316	✓	(unanimous)
SB333 McGee Amend	✓	
" Concur AK	✓	
SB 143 (BAER)		(6)
SB 90 Reconsider?		✓(5)

SENATE BILL/AMENDMENT	AYE	NO
SB 90	✓	✓

AK Amd all Amendments

Rep. Linda H. McCulloch
(Signature)

HR:1993
WP/PROXY

HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 316** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. McGee

And, that such amendments read:

1. Title, line 10.
Following: "SEIZE"
Strike: ","
Insert: "OR"

2. Title, line 11.
Strike: ", OR FORFEIT"

3. Page 4, line 5.
Following: "seizure"
Strike: "⊥"
Insert: "of vehicle or"
Following: "rendering"
Insert: "vehicle"
Following: "inoperable"
Strike: "⊥"

4. Page 4, line 6.
Strike: "and forfeiture of vehicle"

5. Page 4, lines 24 through 26.
Strike: subsection (6) in its entirety
Renumber: subsequent subsection

-END-

SB 316

Committee Vote:
Yes 18, No 0.

HOUSE

Ex 2
2-15-95
SB 237, 316, 333
P1

SB 316 Sec. 5

As there is no deterant to not drive while a persons drivers license is suspended or revoked, we have got to get stiffer laws that would stop the problem we have now with multiple offenders. In Ravalli County Jail right now we have three multiple DUI offenders. They don't seem to mind our penalties as they are now. However our law enforcement ,and our judges are reluctant, to say the least, about enforcing this law already. This section also states to "render inoperable" and that will be more easily enforceed. Subsection 5 Joint ownership is also addressed in regard to seizures and is not a bar to such actions,with an "out" for the truly innocent joint owner similar language is already found in the existing forfeiture procedure 61-8 Subsection 7 is again a must. Suspending or deffered penalties are used give the multiple offender another chance to kill or injure others, costing all of us more then any of us can imagine. Why make a law if it is not going to be enforced?

SB 316 Sec. 6

This is simple to me. Finally something that is really logical. Why would a person not refuse if the penalty is only 90 days compared to 6 months? They can plead not guilty, have their day in Justice Court, then appeal and have another day in District Court. This refusal thing has gotten way out of hand.

SB 316 Sec.7

Consistency is not only important but easy to practice. Let's amend the generic forfeiture provision to be consistant with section 5 and be subject to the same existing procedures.
Sec. 8 Multiple offenders are truly our biggest problem. When it comes to risking lives. Remember driving while empaired is a crime. Let's make the laws show we are serious about this problem, not social but criminal. DUI's are a violent crime. Three strikes and you are out. Subsection 6 Forth time offenders, whether or not it happened 5 years or ten years apart should be a felony offence. Once the offender has shown society that they refuse to take DUI laws seriously they are a dangerous offender, and not safe to society. Subsection 0 Why did 1991 Legislation change or fix something that was not broken? Slow year I guess. No deffered sentences.

SB 316 Sec. 9

There really is no reason why the department should destroy such criminal records. The information is not publicly available but is still to prosecutors and the courts.It is confidential criminal justice information. If a person has a track record that is going to put us all in danger, shouldn't we keep track? Subsection 8 has two conviction that are almost identical. The only difference being,alchol concentration level from testing is generally present in excessive concentration offenses They are identical offenses and should be treated as such.

SB 333 Subsection 4 section 2

Treatment is critical in dealing with DUI offenders. A judge is not certified to make recommendations concernig treatment. In my personal experience drunks are about the best liers and cons around. Only a person trained in chemical dependancy can get the truth. and (maybe) 8

EXHIBIT 2
DATE 2-15-95
SB 237, 316, 333 p.2

SB333 cont.

Councilors can determine the best recommendations. Also in section 4 if, on the second or subsequent offence two councilors can't agree on treatment, a judge could, after seeing all the evidence, make recommendati

SB 333 Sec 1& 3

It states that probationary drivers licenses will not be issued until the course of treatment is completed. This only makes sense to me. Why reward an offender and give them back the privilage to drive if they are not willing to complete treatment? What would the incentive be? Why even take away the privilage in the first place?

This bill, in the way that it is written seems to treat excessive alcohol concentration sentencing differently. What do prosecutors know about chemical dependancy that qualifies them to recommand different treatment?In my experience an alcoholic is alcholic and treatment does work in many cases. That is our priary purpose isn't it? To stop drinking and driving in return we have safe highways, and the huge losses that we are experiencing now to decline?

SENATE JUDICIARY COMM
EXHIBIT NO. 4
DATE 2-15-95
BILL NO. SB 237, 31

Gallatin County

DUI TASK FORCE

104 East Main—Room 313 First Bank Building
Bozeman, Montana 59715
406-585-1492

Education • Awareness • Enforcement

Exhibit No. 4 includes 5 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

February 14, 1995

Judiciary Committee
Montana Senate

To Whom It May Concern,

The Gallatin County DUI Task Force would like to express its strong support of Senate Bills 237, 316 and 333. Senate Bill 316 in particular is vital to the effort to make Montana roads and highways safe from impaired driver

During the Montana Winter Fair held in Bozeman in January of this year, our Task Force did a week-long DUI education program for fair patrons. We provided information and rationale for the legislation contained in Sena Bills 237, 316 and 333. The support for strong DUI laws and strong DUI enforcement was overwhelming. Attach to this letter are sheets containing names and addresses of registered voters who wanted legislators to know tha impaired drivers must be kept off Montana roads.

People are particularly outraged that multiple DUI offenders are still driving and killing innocent people. Impair drivers should be held responsible for their actions. Please support this effort for more effective DUI laws.

Francie McLean, Coordinator
Gallatin County DUI Task Force

DUI LEGISLATION TESTIMONY

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-15-95
BILL NO. SB 237, 316, 333

Submitted By: Tom Huddleston
Representing: Helena City Commission
Lewis & Clark DUI Task Force

MR. CHAIRMAN. MEMBERS OF THE COMMITTEE. I'M HERE TODAY TO SPEAK IN FAVOR OF THE DUI BILLS AND ALL LEGISLATION THAT STRENGTHENS ENFORCEMENT AND DENOTES APPROPRIATE CONSEQUENCES FOR DUI INFRACTIONS. I COME BEFORE YOU ON BEHALF OF THE HELENA CITY COMMISSION AND THE LEWIS AND CLARK DUI TASK FORCE. I'VE BEEN A MEMBER OF THE CITY COMMISSION FOR SEVEN YEARS AND CHAIRMAN OF THE COUNTY TASK FORCE FOR YEARS.

IT SHOULD BE OBVIOUS WHY I WOULD ENCOURAGE ENFORCEMENT AND CONSEQUENCES FOR REPEATED CONVICTIONS OF DUI LAWS. DRUNK DRIVING IS A SERIOUS PROBLEM IN OUR STATE AND DRUNK DRIVERS KILL AND MAIM. REPEAT OFFENDERS IGNORE THE IMPOSED CONSEQUENCES AND BECOME UNINSURED AND UNLICENSED, BUT REMAIN DRIVERS WHO DRINK. TOO MANY OF US CONTINUE TO SEE THIS AS A SOCIAL PROBLEM AND SHAKE OUR HEADS AT THOSE WHO CONTINUE TO CALL FOR MORE AND STIFFER LAWS. AFTER ALL, WE'VE PROBABLY ALL DONE AT LEAST ONCE. ...THERE BUT FOR THE GRACE OF GOD, GO I.

I'D LIKE TO TALK TO YOU ABOUT THAT NOTION. IT'S ONE THAT I SHARED FOR A LONG TIME. I WOULD LIKE TO PROPOSE THAT IF YOU ENACT THIS BILL AND OTHERS LIKE IT, YOU WILL NOT ONLY BE SERVING OUR COMMUNITIES, YOU WILL ALSO SERVE THE OFFENDER. I AM AN ALCOHOLIC AND WAS A PROBLEM DRINKER FOR FIFTEEN YEARS. DURING THAT TIME I DROVE AND DRANK. AFTER LONG NIGHTS AT EITHER PARTIES OR THE BARS. EVEN ON TRIPS ACROSS THE STATE. THERE, BUT FOR THE GRACE OF GOD...NO, I DIDN'T HAVE AN ACCIDENT WHILE DRIVING THAT HURT ANYONE. BUT I DID PARK ON MY SIDEWALK. RAN INTO FENCES. LEFT MY ENGINE RUNNING WHILE I SLEPT IN THE CAR. AND EVEN JOKED ABOUT IT. I WOULD OFTEN RECANT ABOUT HOW "OLE BETSY" KNEW THE WAY HOME. ALL I HAD TO DO WAS PUT THE KEY IN, START HER UP, AND SHE DID THE REST. THEN WE'D ALL CHUCKLE.

THREE YEARS AGO, I GOT LUCKY. I COMMITTED ANOTHER KIND OF STUPID DRUNK TRICK, BROKE THE LAW AND HAD THE CONSEQUENCES ENFORCED. FOR THE FIRST TIME, SOCIETY DIDN'T ENABLE ME TO CONTINUE MY FORM OF SOCIAL BEHAVIOR. INSTEAD, THEY SAID "CLEAN UP OR GO AWAY." THERE WERE NO EARS TO HEAR MY LAME EXCUSES OR PLEAS FOR MORE TIME. WELL, I WENT AWAY AND CLEANED UP. I GOT THE HELP I NEEDED.

TODAY, I START ANOTHER CHAPTER IN MY FOURTH YEAR OF RECOVERY. AND MY LIFE IS FULL. I HAVE A LOVELY FAMILY AND A BRAND NEW GRANDDAUGHTER. I LIVE IN A GREAT COMMUNITY AND STATE AND I CONTRIBUTE. I REDISCOVERED THAT THE WEEK HAS SEVEN DAYS AND I ENJOY THEM ALL. AND IN EACH OF THEM, I AM IN CONTROL OF EVERYTHING THAT I DO OR USE.

ON BEHALF OF ALL OF MY BROTHERS AND SISTERS WHO ARE NOT IN CONTROL, PLEASE DO NOT ENABLE THEM ANY LONGER. SAVE THEIR LIVES AND YOURS. PLEASE MAKE THE CONSEQUENCES MEANINGFUL FOR RECOVERY FOR THEM ALSO.

THANK YOU.

DATE 2-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB237 SB316 SB 333 SB350

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Op
CLARENCE BRAZIL		SB237	X	
CLARENCE BRAZIL		SB316	X	
Albert Ecke	High. Traffic Safety	SB 333, 237, 316	X	
Dianne Stanley	Gallatin DUI Task Force	237 316 333	✓	
Jerry Archer	Billings Police DUI Task Force	237 316 333	✓	
Harold Hanser	Hate DUI Task force	237, 316 333	✓	
JOE ROBERTS	DUI Prevention Committee	237, 316, 333	✓	
John & Jill Campbell	SELF	237, 316 333	✓	
Peggy S Wheeler	SELF	237 316 333	✓	
Craig Reap	MHP	11	✓	
Mark Cady	Billings Police DUI TASK FORCE	237, 316 333	✓	
Nancy K. Jovin	Ravalli County DUI Task Force	237, 316 333	✓	
DARRYL BRUCE	DCHS/HDHD Secr	237 316 333	✓	
GEORGE BONINI	MTEA	237	✓	
WM. J. WARE, Chief of Police	Mt Assn. of Chiefs of Police	237, 316, 333	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETAR

DATE 2-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 237 SB316 SB 333 SB350

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Support	Op
STEVE E. RANDOLPH	ZRPNTR'S REST		X	
BOB CAMPBELL	SELF	237		✓
KATHY McGOWAN	CDPM, MSPOA	316		
KATHY McGOWAN	" "	333		
Mike Runyan	Boyd Andrew CDCC	333	X	
Troy McGee	Mont Police Protective Assoc.	237 316 333	✓	
Francie McGee	Gallatin Co. DUI	237 316 333	X	
Dennis Paxinos	Yellowstone Co Atty	DUI Bills	X	
Tom Huddleston	City of Helena	DUI	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETA

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 316
Representative Anderson

March 25, 1995 3:31 pm

Mr. Chairman: I move to amend **Senate Bill 316** (third reading copy -- blue).

Signed: Shirley W. Anderson
Representative Anderson

And, that such amendments to Senate Bill 316 read as follows:

1. Page 2, line 15.
Strike: "shall"
Insert: "may not"

-END-

ADOPT 58-27

REJECT

SB 316

HOUSE

SENATE BILL NO. 316

INTRODUCED BY BISHOP

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE USE OF A PRELIMINARY ALCOHOL SCREENING TEST FOR A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE; ESTABLISHING THAT IT IS UNLAWFUL FOR A PERSON UNDER AGE 21 TO DRIVE WITH AN ALCOHOL CONCENTRATION OF 0.02 OR MORE; PROHIBITING THE TRANSFER OF AN OWNER'S INTEREST IN A VEHICLE THAT IS SUBJECT TO TEMPORARY SEIZURE OR RENDERED INOPERABLE BECAUSE OF THE OWNER'S DRINKING AND DRIVING OFFENSE; REQUIRING A SENTENCING COURT TO TEMPORARILY SEIZE~~,~~ OR RENDER INOPERABLE~~, OR FORFEIT~~ THE VEHICLE OF A PERSON CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE WHEN THE SUSPENSION OR REVOCATION IS BECAUSE OF THE PERSON'S DRINKING AND DRIVING OFFENSE; INCREASING TO 6 MONTHS THE SUSPENSION AND REVOCATION TIME PERIOD FOR A FIRST REFUSAL TO SUBMIT TO A BLOOD, BREATH, OR URINE TEST; PROVIDING THAT A FOURTH DRIVING WHILE UNDER THE INFLUENCE OFFENSE OR EXCESSIVE ALCOHOL CONCENTRATION OFFENSE CONSTITUTES A FELONY; PROVIDING THAT RECORDS OF CONVICTIONS FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROHIBITING DEFERRED PROSECUTIONS OR SENTENCING FOR DRIVING UNDER THE INFLUENCE OFFENSES OR FOR EXCESSIVE ALCOHOL CONCENTRATION OFFENSES; AND AMENDING SECTIONS 46-16-130, 61-5-212, 61-8-402, 61-8-421, 61-8-714, AND 61-8-722, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2].

(2) The results of a screening test may be used for determining whether probable cause exists to

believe a person has violated 61-8-401, 61-8-406, or [section 2].

(3) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(4) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year of that person's driver's license.

(5) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

(6) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of [section 2] and whether the person refused to submit to the test.

(7) The provisions of 61-8-402(2) through (7) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department ~~shall~~ MAY NOT consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(8) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(6).

NEW SECTION. **Section 2. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public.

(2) A person convicted of a violation of this section must be sentenced under the provisions of 45-5-624.

(3) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

NEW SECTION. **Section 3. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture -- penalty.** (1) It is unlawful for the owner of a vehicle subject to actions under

61-5-212(3) or (6) or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than $20,000, or both.

Section 4. Section 46-16-130, MCA, is amended to read:

"46-16-130. Pretrial diversion. (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the

approval of the court.

(3) A prosecution for a violation of 61-8-401, 61-8-406, or [section 2] may not be deferred."

Section 5. Section 61-5-212, MCA, is amended to read:

"**61-5-212. Driving while license suspended or revoked -- penalty -- seizure, OF VEHICLE OR rendering VEHICLE inoperable, and forfeiture of vehicle.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402(5), 61-8-406, [section 1], or [section 2] must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

~~(6) Upon a second or subsequent conviction of a violation under the terms of subsection (3), the sentencing court shall order the motor vehicle owned and operated by the convicted person at the time of the offense to be seized and subjected to the forfeiture procedure provided in 61-8-421.~~

~~(7)~~(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 6. Section 61-8-402, MCA, is amended to read:

"**61-8-402. Blood, breath, or urine tests.** (1) ~~Any~~ A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401, to a test or tests of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test or tests must be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests are administered. A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.

(2) ~~Any~~ A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1) ~~of this section~~.

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test or tests designated by the arresting officer as provided in subsection (1), a test may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall forward the license to the department, along with a sworn report that the peace officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test or tests upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a test or tests:

(a) upon a first refusal, a suspension of ~~90 days~~ 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from

the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test or tests.

(7) All suspensions are subject to review as provided in this part."

Section 7. Section 61-8-421, MCA, is amended to read:

"**61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-5-212, 61-8-714 or 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a second or subsequent offense under 61-5-212 or of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

Section 8. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in subsections ~~(7)~~ (8) and ~~(8)~~ (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection ~~(7)~~ (8), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection ~~(7)~~ (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection ~~(7)~~ (8), on the third ~~or subsequent~~ conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection ~~(7)~~ (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third ~~or subsequent~~ offense that occurred within 5 years of the first offense may not be ~~deferred or~~ suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(4)~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

~~(5)~~(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been ~~no~~ an additional conviction for an offense under this section for a period of 5 years after

a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

~~(6)~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

~~(7)~~(8) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(8)~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(10) A court may not defer imposition of sentence under this section."

Section 9. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection ~~(7)~~ (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection ~~(7)~~ (9), on a second conviction of a violation of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection ~~(7)~~ (9), on a third ~~or subsequent~~ conviction of a violation of 61-8-406, ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(4)~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

~~(5)~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

~~(6)~~(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent

offense, in which case all previous convictions must be used for sentencing purposes. If there has not been ~~no~~ an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then ~~the prior offense must be expunged from the defendant's record~~ all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(8) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

~~(7)~~(9) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(8)~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(11) A court may not defer imposition of sentence under this section."

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [sections 1 through 3].

-END-